

San Francisco Law Library

No.

Presented by

.....

EXTRACT FROM BY-LAWS

Section 9. No book shall, at any time, be taken from the Library Room to any other place than to some court room of a Court of Record, State or Federal, in the City of San Francisco, or to the Chambers of a Judge of such Court of Record, and then only upon the accountable receipt of some person entitled to the use of the Library. Every such book so taken from the Library, shall be returned on the same day, and in default of such return the party taking the same shall be suspended from all use and privileges of the Library until the return of the book or full compensation is made therefor to the satisfaction of the Trustees.

Sec. 11. No books shall have the leaves folded down, or be marked, dog-eared, or otherwise soiled, defaced or injured. Any party violating this provision, shall be liable to pay a sum not exceeding the value of the book, or to replace the volume by a new one, at the discretion of the Trustees or Executive Committee, and shall be liable to be suspended from all use of the Library till any order of the Trustees or Executive Committee in the premises shall be fully complied with to the satisfaction of such Trustees or Executive Committee.

95
1
No. 2413

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FOUR VOLUMES.)

EDWIN F. MEYER and EMAR GOLDBERG,
Plaintiffs in Error,
vs.


THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME I.

(Pages 1 to 352, Inclusive.)

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Northern Division.

FILED
JUL 1 - 1914



Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov

No. 2413

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FOUR VOLUMES.)

EDWIN F. MEYER and EMAR GOLDBERG,
Plaintiffs in Error,
VS.

THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME I.
(Pages 1 to 352, Inclusive.)

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Northern Division.

James

876

895

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Admission of Service of Proposed Bill of Ex- ceptions....	40
Appearance of Attorneys for Emar Goldberg.	27
Appearance of Attorneys for Edwin F. Meyer.	28
Arraignment of Defendant Emar Goldberg....	22
Arraignment of Defendant Edwin F. Meyer...	21
Assignment of Errors of Defendants, Emar Goldberg and Edwin F. Meyer.....	1449
Bill of Exceptions on Behalf of Edwin F. Meyer and Emar Goldberg.....	50
Certificate of Clerk U. S. District Court to Tran- script of Record, etc.....	1488
Citation on Writ of Error (Copy).....	1493
Citation on Writ of Error (Original).....	1496
Counsel, Names and Addresses of.....	1
Hearing....	35
Indictment....	2
Instructions of the Court to the Jury.....	1372
Judgment Against Emar Goldberg.....	36
Judgment Against Edwin F. Meyer.....	37
Motion for Transfer of Cause.....	24
Motion for Verdict in Favor of Defendant Corder, and Order Thereon.....	1371

Index.	Page
Motion to Arrest Judgment.....	32
Motion to Arrest Judgment.....	1435
Names and Addresses of Counsel.....	1
Order Allowing Bill of Exceptions.....	1439
Order Allowing Plaintiff Until March 10, 1914, to File Amendments to Bill of Exceptions..	49
Order Allowing Writ of Error and Supersedeas.	1442
Order Enlarging Return Day to March 2, 1914..	1498
Order Extending Return Day to May 30, 1914..	1499
Order Directing Transmission of Original Ex- hibits to Appellate Court, etc.....	43
Order Extending Time to December 22, 1913, to File Proposed Bill of Exceptions.....	31
Order Extending Time to January 21, 1914, to File Bill of Exceptions.....	38
Order Extending Time to February 20, 1914, to File Bill of Exceptions.....	39
Order Fixing Bond of Defendants.....	30
Order for Omission from Bill of Exceptions of Exhibits not Introduced in Evidence, etc...	46
Order Overruling Motion in Arrest of Judgment and Denying Motion for a New Trial.....	35
Order Transferring Cause to Northern Division of Circuit Court.....	26
Petition for Writ of Error.....	1440
Pleas of "Not Guilty" of Defendants Edwin F. Meyer and Emar Goldberg.....	23
Sentence of Emar Goldberg.....	36
Sentence of Edwin F. Meyer.....	37
Supersedeas Bond of Emar Goldberg.....	1447
Supersedeas Bond of Edwin F. Meyer.....	1444

Index.	Page
Stipulation as to Transcript of Record on Writ of Error.....	1485
Stipulation Extending Time for Settlement of Bill of Exceptions, etc.....	48
Stipulation for Omission from Bill of Excep- tions of Exhibits not Introduced in Evi- dence, etc.....	45
Stipulation for Settlement and Allowance of Bill of Exceptions, etc.....	1438
Stipulation Waiving Printing of All Exhibits and for Transmission of Original Exhibits to Appellate Court.....	41
TESTIMONY ON BEHALF OF PLAIN- TIF:	
COOMBS, MRS. ETHEL J.....	339
Cross-examination.....	343
FLAHERTY, JOHN.....	517
Cross-examination.....	520
FOWLER, E. S.....	1201
Cross-examination..	1206
GRAEFF, A. W.....	525
HANSCHILD, MISS AGNES.....	377
Cross-examination.....	387
HOOPEs, I. B.....	357
Cross-examination by Mr. Vanderveer.	369
Cross-examination by Mr. Schlesinger..	373
Redirect Examination.....	374
HOUSE, HIRAM S.....	530
Cross-examination	606
Redirect Examination...	611

Index.	Page
TESTIMONY ON BEHALF OF PLAIN-	
TIFF—Continued:	
HOWELL, C. H.....	502
HOWELL, JOHN S.....	522
HUTSON, CHARLES F.....	445
JOHNSON, W. G.....	351
Cross-examination.....	352
Redirect Examination.....	352
Recross-examination... ..	352
Redirect Examination.....	353
KETTLEWELL, J. A.....	265
Cross-examination by Mr. Morris....	313
Recalled—Cross-examination.	388
Redirect Examination.....	434
Recross-examination.....	444
Recalled.....	620
Recalled in Rebuttal.....	1367
Cross-examination.....	1368
LOCKWOOD, GEORGE EDWARD.....	235
Cross-examination by Mr. Schlesinger.	247
Cross-examination by Mr. Morris....	248
Redirect Examination.....	253
Recross-examination	254
Redirect Examination	254
Recalled in Rebuttal.....	1322
Cross-examination.....	1324
Redirect Examination... ..	1331
Recross-examination.....	1331
McNEIL, A. R.....	255
Cross-examination.....	261
Redirect Examination.....	263

Index.

Page

TESTIMONY ON BEHALF OF PLAIN-

TUFF—Continued:

Recross-examination by Mr. Schles-
inger 263

Recross-examination by Mr. Riddell.. 265

Recalled—Cross-examination 462

Recalled... 523

Cross-examination..... 525

Recross-examination.. 525

NAGUS, W. J..... 464

Cross-examination..... 482

Redirect Examination.... 493

Recross-examination... 497

RILEY, E. K..... 512

Cross-examination..... 514

Redirect Examination... 515

Recross-examination... 516

Recalled in Rebuttal... 1336

RUBENSTEIN, MRS. SARAH E..... 345

Cross-examination..... 349

Redirect Examination... 350

Recross-examination... 351

SILVERSTONE, E..... 447

Cross-examination.... 461

Recalled..... 612

SLYSTER, BEN U..... 526

SPEAR, RAY..... 51

Cross-examination by Mr. Morris..... 110

Cross-examination by Mr. Schles-
inger..... 185

Cross-examination by Mr. Vanderveer. 199

Index.	Page
TESTIMONY ON BEHALF OF PLAIN-	
TIFF—Continued:	
Cross-examination by Mr. Schles-	
inger.....	204
Redirect Examination.....	222
Recross-examination.....	234
Recalled.....	613
Cross-examination by Mr. Schles-	
inger.....	616
Cross-examination by Mr. Vanderveer.	617
Recalled in Rebuttal.....	1337
Cross-examination by Mr. Shipley. ...	1346
Cross-examination by Mr. Kerr... ..	1357
STEWART, F. D.....	344
Cross-examination.....	345
Redirect Examination.....	345
Recross-examination....	345
Recalled.....	356
WALKER, R. S.....	507
TESTIMONY ON BEHALF OF DEFEND-	
ANTS:	
BAKER, FRANK L.....	873
Cross-examination.....	874
Redirect Examination.....	876
COOK, L. A.....	656
DAMM, MILTON E.....	859
Cross-examination.....	863
Redirect Examination.....	866
Recross-examination....	867
Redirect Examination... ..	868

Index.

Page

TESTIMONY ON BEHALF OF DEFEND-

ANTS—Continued:

DOWNEY, R. E.....	940
Cross-examination.....	942
Redirect Examination.....	945
ECHSTEINE, NATHAN.....	1333
Cross-examination.....	1334
Redirect Examination.....	1336
FOWLER, E. S.....	667
Cross-examination.....	674
Redirect Examination.....	682
Recross-examination.....	682
FRINK, FRANCIS G.....	844
Cross-examination.....	846
Redirect Examination...	849
GOLDBERG, EMAR.....	682
Cross-examination.....	758
Redirect Examination...	829
Recross-examination by Mr. Allen....	832
Recross-examination by Mr. Vander- veer.....	833
Recalled—Cross-examination... ..	876
GREEN, MRS. FLORA.....	659
Cross-examination....	659
Redirect Examination....	659
HARDENBERG, LOUIS R.....	869
Cross-examination....	870
HOUSE, HIRAM S.....	634
Recalled... ..	660
Recalled... ..	834

Index.	Page
TESTIMONY ON BEHALF OF DEFEND-	
ANTS—Continued:	
KETTLEWELL, J. A. (Recalled).....	1200
LANE, JAMES F.....	853
Cross-examination... ..	854
Redirect Examination.....	855
Recross-examination... ..	855
Redirect Examination.....	858
Recross-examination.....	858
Recalled	868
MEYER, EDWIN F.....	884
Recalled.....	907
Recalled.....	945
Recalled.....	973
Cross-examination... ..	1157
Recalled—Cross-examination... ..	1206
Redirect Examination... ..	1298
Recalled—Redirect Examination... ..	1313
MORRIS, L. G.....	871
Cross-examination... ..	872
SILVERSTONE, E.....	1310
Cross-examination... ..	1312
SLATER, JOHN C....	849
Cross-examination... ..	851
Redirect Examination by Mr. Vander-	
veer.....	851
Redirect Examination by Mr. Schles-	
inger.....	851
Recross-examination... ..	852
SMITH, HERBERT E.....	963
Cross-examination.....	969
Redirect Examination.....	971

Index.	Page
TESTIMONY ON BEHALF OF DEFEND-	
ANTS—Continued:	
STACY, RALPH S.....	901
Cross-examination... ..	903
Redirect Examination.....	904
TERRY, ED. L.....	842
Cross-examination.....	843
WALLS, W.....	655
WALKER, ROBERT M.....	904
Cross-examination.....	906
Redirect Examination.....	907
Recross-examination.....	907
Recalled.....	1305
Verdict Against Edwin F. Meyer... ..	29
Verdict Against Emar Goldberg.....	30
Writ of Error (Copy).....	1490
Writ of Error (Original).....	1494

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 2039.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL,
EMAR GOLDBERG, W. A. CORDER and
E. SILVERSTONE,
Defendants.

Names and Addresses of Counsel.

BERT SCHLESINGER, Esq., Attorney for De-
fendant and Plaintiff in Error, Emar Goldberg,
Claus Spreckels Building, San Francisco,
California.

J. A. KERR, Esq., Attorney for Defendant and
Plaintiff in Error, Emar Goldberg,
1309-1316 Hoge Building, Seattle, Wash-
ington.

E. S. McCORD, Esq., Attorney for Defendant and
Plaintiff in Error, Emar Goldberg,
1309-1316 Hoge Building, Seattle, Wash-
ington.

WILL H. MORRIS, Esq., Attorney for Defendant
and Plaintiff in Error, Edwin F. Meyer,
55 Haller Block, Seattle, Washington.

S. M. SHIPLEY, Esq., Attorney for Defendant and
Plaintiff in Error, Edwin F. Meyer,
55 Haller Block, Seattle, Washington.

ANDREW R. BLACK, Esq., Attorney for Defendant and Plaintiff in Error, Edwin F. Meyer,
315 Pacific Block, Seattle, Washington.

CLAY ALLEN, Esq., Attorney for Plaintiff and Defendant in Error,
310 Federal Building, Seattle, Washington.

CHARLES F. RIDDELL, Esq., Attorney for Plaintiff and Defendant in Error,
310 Federal Building, Seattle, Washington.

[1*]

*United States Circuit Court, Western District of
Washington, Western Division.*

February Term, 1911.

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL,
EMAR GOLDBERG, W. A. CORDER and
E. SILVERSTONE,

Defendants.

Indictment.

The United States of America,
Western District of Washington,—ss.

The grand jurors of the United States of America,
duly empaneled, sworn and charged to inquire
within and for the Western District of Washington,
upon their oaths present:

*Page-number appearing at foot of page of original certified Record.

That on the 2d day of June, A. D. 1908, and for a long time prior thereto, one Edwin F. Meyer, late of the Western District of Washington, and within the jurisdiction of this Court, was an officer of the said United States, and a person acting for and on behalf of the said United States in an official capacity, under and by virtue of authority of a Department of the Government thereof, that is to say: Principal clerk in the office of the general storekeeper of the United States Navy Yard, Puget Sound, Washington, in the Navy Department of the United States, and at the time and during the period aforesaid did act as such and perform the duties of such principal clerk; that by reason of his being such officer and person acting as aforesaid under the law and [2] regulations theretofore and pursuant to law prescribed and promulgated by the Secretary of the Navy of the said United States for the government of his department, and the conduct of its officers and clerks, and in force at said time and during the said period, he was vested with sundry powers, duties and discretions, and amongst other things, with power, duty and discretion in suggesting and causing to be determined and in determining from time to time the minimum amount of supplies of various kinds and descriptions which should be kept on hand by said storekeeper of the Navy Yard Puget Sound in the storehouse in the navy yard aforesaid, in proposing and recommending from time to time the purchase of various kinds of supplies ——— for use in said navy yard, in devising and drafting from time to time specifica-

tions of the supplies so proposed and recommended to be purchased as aforesaid, in suggesting and causing to be issued and in issuing requisitions for the purchase thereof and recommending the approval of such requisitions by his superior officers, in suggesting and causing to be placed and in placing on such requisitions the estimated cost of the supplies therein specified, in suggesting and causing to be fixed and in fixing the time designated in said requisitions within which the successful bidder would be required to deliver such supplies, in suggesting and fixing and causing to be fixed the time when such requisitions should be forwarded from the office of said storekeeper of the Navy Yard, Puget Sound, to the Bureau of Supplies and Accounts, Navy Department, Washington, D. C., and to the United States Navy Pay Office at Seattle, Washington, in giving out of information in regard to such requisitions, in suggesting and devising ways and [3] means for the receipt at said Navy Yard, Puget Sound, of such supplies so requisitioned as aforesaid, and in suggesting and recommending the acceptance or rejection of such supplies by the said Storekeeper aforesaid.

That on the 2d day of June, A. D. 1908, and for a long time prior thereto, one J. A. Kettlewell, late of the Western District of Washington, and within the jurisdiction of this court, was an officer of the United States, and a person acting for and on behalf of the said United States in an official capacity, under and by virtue of authority of a Department of the Government thereof, that is to say: Chief

Clerk to the Navy Pay Officer in the United States Navy Pay Office at Seattle, Washington, in the Navy Department of the United States, and at said time and during the period aforesaid, did act as such and perform the duties of such Chief Clerk; that by reason of his being such officer and person acting as aforesaid under the law and the regulations theretofore and pursuant to law prescribed and promulgated by the Secretary of the Navy of the said United States for the government of his said department, and the conduct of its officers and clerks, and in force at said time and during said period, he was vested with sundry powers, duties and discretions, and amongst other things, with power, duty and discretion in suggesting the disposition of and disposing of the requisitions for supplies received from the Storekeeper of the Navy Yard, Puget Sound, Washington, and from the Bureau of Supplies and Accounts, Navy Department, Washington, D. C., in giving notice to the public that competitive proposals and bids would be received by the paymaster of the United States Navy Pay Office at Seattle, Washington, for the purchase of [4] supplies for the Storekeeper, Navy Yard, Puget Sound, in the preparation of and sending out to the public of proposals containing specifications of the supplies covered by said requisitions, in suggesting and devising ways and means of receiving bids and proposals, in recommending the award of and awarding contracts to the successful bidders, in suggesting the approval or rejection of the accounts rendered to said pay-

master of the United States Navy Pay Office by such successful bidder, according as such account should be fair and honest or false and fraudulent, in suggesting and recommending the payment or nonpayment of such amounts so claimed by such successful bidder to be due him for supplies furnished according as such claims were honest and fair or false and fraudulent, in suggesting and causing to be issued, mailed and delivered, and in issuing, mailing and delivering to the successful bidder the check of the Paymaster of the United States Navy Pay Office at Seattle, Washington, for and in payment of the claim of such successful bidder for supplies so forwarded to the Storekeeper, Navy Yard, Puget Sound, Washington.

That on the 2d day of June, 1908, and for a long time prior thereto, one Emar Goldberg was a resident of Seattle, Washington, in the Western District of Washington, and within the jurisdiction of this court, and was manager of the Seattle branch of the Great Western Smelting and Refining Company of San Francisco, California, a corporation theretofore organized and existing under and by virtue of the laws of the State of California, and having offices in San Francisco, Chicago, Seattle, Los Angeles, St. Louis, and Vancouver, B. C., said branch of the Great Western Smelting and Refining Company at [5] Seattle, Washington, then and there being engaged in the business of buying and selling scrap iron, tin, zinc, brass, copper and kindred articles.

That on said 2d day of June, A. D. 1908, and for

a long time prior thereto, one W. A. Corder was a resident of the city of Seattle, in the Western District of Washington, and within the jurisdiction of this court, and was manager of a mercantile business operating under the firm name and style of W. A. Corder Company, and was engaged in the business of buying and selling machinery and machinery supplies.

That on the 2d day of June, A. D. 1908, and for a long time prior thereto, one E. Silverstone was a resident of Seattle, in the Western District of Washington, and within the jurisdiction of this court, and was engaged in conducting a hotel located in Seattle, known as The Herald, said E. Silverstone being then and there a part owner and the manager thereof.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That on or about the 2d day of June, 1908, within the Western District of Washington and within the jurisdiction of this court, the said Edwin F. Meyer and the said J. A. Kettlewell, being such officers and persons in the employ of the Navy Department of the United States as aforesaid, did unlawfully and maliciously conspire, combine and confederate with the said Emar Goldberg, W. A. Corder and E. Silverstone, and with certain other evil-disposed persons whose names are to the grand jury unknown, knowingly to defraud the United States of divers large sums of money by means of a certain fraudulent scheme devised by the said Edwin F. Meyer, [6] J. A. Kettlewell, W. A.

Corder, Emar Goldberg and E. Silverstone, and which was then and there in process of execution by them; that said fraudulent scheme was first devised, concocted and put in operation in said Western District of Washington by and between said Edwin F. Meyer, J. A. Kettlewell, W. A. Corder, Emar Goldberg and E. Silverstone on or about the first day of April, 1908, and was continuously in process of execution in said Western District of Washington by and between the said Edwin F. Meyer, J. A. Kettlewell, W. A. Corder, Emar Goldberg and E. Silverstone, from about the said 1st day of April, 1908, to and including the 2d day of June, 1908, and was then and thereafter in process of execution by and between the said Edwin F. Meyer, J. A. Kettlewell, W. A. Corder, Emar Goldberg and E. Silverstone, in their acts done to effect the object of said conspiracy.

That the said fraudulent scheme contemplated that, as the said Great Western Smelting and Refining Company at Seattle, Washington, and said W. A. Corder Company had on hand on, to wit, the said 1st day of April, 1908, a large stock of zinc, rolled sheet, boiler plates, the said Edwin F. Meyer should with fraudulent intent issue, and cause to be issued by the United States Navy Yard, Puget Sound, Washington, a requisition for the purchase for use at said Navy Yard of a large quantity of zinc, rolled sheet, boiler plates, and should place and cause to be placed in said requisition as the estimated cost price of such zinc, rolled sheet, boiler plates, a price in excess of the fair market value

thereof, and should place and cause to be placed in said requisition as the time in which the successful bidder should deliver the said zinc, rolled sheet, boiler plates, to the said United [7] States Navy Yard, Puget Sound, so short a time of delivery that none but merchants of Seattle and vicinity could comply with said requirements, and so that none but said merchants of Seattle and vicinity would be able to furnish said zinc, rolled sheet, boiler plates, and would be able to enter into competition for such contract, and should, with fraudulent intent, so devise and draft the specifications contained in said requisition as to the kind and nature and quality of said zinc, rolled sheet, boiler plates, to be furnished within the said time of delivery, that none but the said Great Western Smelting and Refining Company and said W. A. Corder Company could comply with said requirements.

That from time to time the said Edwin F. Meyer should notify the said J. A. Kettlewell, Emar Goldberg, W. A. Corder and E. Silverstone of the progress of such requisition, so that they, the said J. A. Kettlewell, Emar Goldberg, W. A. Corder and E. Silverstone would be able to prevent legitimate competition.

That E. Silverstone, without authority so to do, should ostensibly represent a certain alleged mercantile establishment designated as the Fowler Metal Company of San Francisco, but actually represent and act for and in behalf of said Great Western Smelting and Refining Company and said W. A. Corder Company, and should at the proper time

offer for filing and file with the United States Navy Pay Office at Seattle, Washington, a proposal and bid to furnish at a price greatly in excess of the fair or true market value thereof, the said zinc, rolled sheet, boiler plates so to be requisitioned for use at the said Navy Yard, Puget Sound, aforesaid, purporting to be the proposal and bid of the Fowler Metal Company of San Francisco, but to be in reality the proposal and bid of said E. [8] Silverstone acting for and in behalf of the Great Western Smelting and Refining Company and said W. A. Corder Company.

That when said requisition in due course should reach the United States Navy Pay Office at Seattle, Washington, the said J. A. Kettlewell, with fraudulent intent, should send out proposals containing the specifications of the zinc, rolled sheet, boiler plates, so desired to be purchased for the use of the Navy Yard, Puget Sound, to a list of merchants in Seattle and vicinity, which should contain the names of no merchants other than the Great Western Smelting and Refining Company, Seattle, Washington, W. A. Corder Company, Seattle, Washington, and said Fowler Metal Company of San Francisco, except the names of such merchants who were known to said J. A. Kettlewell to be unable to furnish said zinc and would be unable to bid for said contract.

And the said J. A. Kettlewell should, with fraudulent intent, examine the bids and proposals to furnish such zinc, rolled sheet, boiler plates, so thereafter to be received at the said United States Navy

Pay Office, Seattle, Washington, and should ascertain whether or not in fact any merchants other than the said Great Western Smelting and Refining Company, said W. A. Corder Company, and the said Fowler Metal Company, had in fact bid thereon, and should so manipulate and alter and change such bids, if any, that no person, firm or corporation should be awarded the contract to furnish said zinc other than either the said Great Western Smelting and Refining Company, W. A. Corder Company or Fowler Metal Company, or some person, firm or corporation acting for and in behalf of either the said Great Western Smelting and Refining Company, or said W. A. Corder Company. [9]

That said J. A. Kettlewell should recommend to the Paymaster of the United States Navy Pay Office at Seattle, Washington, and arrange to have accepted the bid and proposal of said Fowler Metal Company so to be offered and filed by the said E. Silverstone, and should arrange to have awarded to said Fowler Metal Company the contract for the furnishing of said zinc, rolled sheet, boiler plates, so to be requisitioned, as aforesaid; that said Edwin F. Meyer should arrange to have said zinc, rolled sheet, boiler plates, which would be forwarded to the United States Navy Yard, Puget Sound, by said Great Western Smelting and Refining Company and said W. A. Corder Company in fulfillment of the Fowler Metal Company contract, accepted without question, and said J. A. Kettlewell should recommend and secure the approval of the account as shown by a certain certified bill to be filed, and caused to be filed, by said

E. Silverstone with the United States Navy Yard, Puget Sound, Washington, purporting to be the certified bill of the Fowler Metal Company, showing delivery of said zinc, rolled sheet boiler plates, and the acceptance of same at said Navy Yard, Puget Sound, and that none of said zinc, rolled sheet, boiler plates had been paid for, and should recommend and secure the issuance by the Paymaster at the United States Navy Pay Office at Seattle, Washington, of a check payable to the order of the said Fowler Metal Company for the amount appearing to be due the said Fowler Metal Company according to the account so to be rendered as aforesaid, and should arrange to have said check delivered to said E. Silverstone or said Emar Goldberg.

And that the object and purpose of said unlawful conspiracy was that said Edwin F. Meyer and said J. A. Kettlewell should so fraudulently exercise said powers, duties and [10] discretion of their said offices that there should be no real competition in the bidding for the contract to supply said zinc, rolled sheet, boiler plates, for the use of the United States Navy Yard, Puget Sound, and that the said Great Western Smelting and Refining Company and said W. A. Corder Company, under the name of some one of them, or some other person or corporation for their benefit, would be the only bidders, and that the contract to furnish said zinc, rolled sheet, boiler plates, would be obtained by either the said Great Western Smelting and Refining Company, W. A. Corder Company, or Fowler Metal Company, or by and in the name

of some other person or corporation, but secretly for the benefit of said Great Western Smelting and Refining Company and said W. A. Corder Company; and it was further the object and purpose of said unlawful conspiracy, that the United States should pay for said zinc, rolled sheet, boiler plates a price greatly in excess of its real value, and that said conspirators should obtain for themselves an exorbitant and unreasonable profit in the sale of said zinc, rolled sheet, boiler plates, to the said United States; and it was further the object of said unlawful conspiracy that said persons, to wit: Edwin Meyer, J. A. Kettlewell, Emar Goldberg, acting for and as the agent and manager of said Great Western Smelting and Refining Company, W. A. Corder, acting for and as the manager of W. A. Corder Company, and E. Silverstone, or some of them, should appropriate and convert to their own use such unreasonable profits so fraudulently to be realized from the sale of said zinc, rolled sheet, boiler plates, to the said United States, the proportion in which said unreasonable profits so fraudulently to be realized from the sale of such zinc, rolled sheet, boiler plates, to the United States, should be divided between Edwin Meyer, J. A. Kettlewell, Emar Goldberg, acting for and as the agent and [11] manager of said Great Western Smelting and Refining Company, W. A. Corder, acting for and as the manager of W. A. Corder Company, and E. Silverstone, or some of them, being to the grand jurors unknown.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance

of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said J. A. Kettlewell, on or about the 1st day of June, 1908, in the Western District of Washington and within the jurisdiction of this court, being such officer and person acting as aforesaid, did then and there deliver, and cause to be delivered, to the said Emar Goldberg, a certain check signed by Robert H. Orr as Paymaster of the United States Navy Pay Office, Seattle, Washington, and drawn on The Seattle National Bank, Seattle, Washington, a United States Depositary, for the sum of Seven Thousand Four Hundred and Seventeen and 09/100 Dollars (\$7,417.09), payable to the order of the Fowler Metal Company, which said check was then and there in words and figures following, to wit:

	No. 82.	U. S. Navy Pay Office,
		Seattle, Washington, May 26th '08.
United States Depositary.	The Seattle National Bank, Seattle, Washington.	
State Object for which Drawn.	United States Depositary.	order
Zincs. 1725.	Pay to Fowler Metal Co. or bearer	Seventy
	four hundred and seventeen 09/100 Dollars.	
	\$7417.09/00	ROBERT H. ORR,
		Paymaster, U. S. N.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said J. A. Kettlewell, on or about the 1st day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, being such officer and person acting as afore-

said, did then [12] and there deliver, and cause to be delivered to the said E. Silverstone a certain check signed by Robert H. Orr as Paymaster of the United States Navy Pay Office, Seattle, Washington, and drawn on the Seattle National, Seattle, Washington, a United States depositary, for the sum of Seven Thousand Four Hundred and Seventeen and 09/100 Dollars (\$7,417.09), payable to the order of the Fowler Metal Company, which said check was then and there in words and figures following, to wit:

	No. 82.	U. S. Navy Pay Office,
		Seattle, Washington, May 26th '08.
United States Depositary.	The Seattle National Bank, Seattle, Washington.	
State Object for which Drawn.	United States Depositary.	order
Zines. 1725.	Pay to Fowler Metal Co. or bearer	Seventy
	four hundred and seventeen 09/100 Dollars.	
	\$7417.09/00	ROBERT H. ORR,
		Paymaster, U. S. N.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Emar Goldberg, on or about the 1st day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a certain obligation and security of the United States, to wit, a certain check drawn by an authorized officer of the United States, to wit, Robert H. Orr, as Paymaster of the United States Navy Pay Office, Seattle, Washington, upon the Seattle National Bank, Seattle, Washington, a United States depositary,

which said check was in words and figures following, to wit: [13]

No. 82.	U. S. Navy Pay Office, Seattle, Washington, May 26th '08.
United States Depository.	The Seattle National Bank, Seattle, Washington. United States Depository.
State Object for which Drawn.	order
Zincs. 1725.	Pay to Fowler Metal Co. or bearer Seventy four hundred and seventeen 09/100 Dollars. \$7417.09/00
	ROBERT H. ORR, Paymaster, U. S. N.

and the said Emar Goldberg so having said check in his possession at the time and place aforesaid, within the Western District of Washington, and within the jurisdiction of this court, did, with fraudulent intent, knowingly write and cause to be written upon the back of said check a certain endorsement of the following tenor, to wit:

“Pay to the order of E. Silverstone.

FOWLER METAL CO.

Pr. E. S. FOWLER,

Tres. & Mgr.”

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Emar Goldberg, on or about the 1st day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a certain obligation and security of the United States, to wit, a certain check drawn by an authorized officer of the United States, to wit, Robert H. Orr, as Pay-

master of the United States Navy Pay Office, Seattle, Washington, upon the Seattle National Bank, Seattle, Washington, a United States depository, which said check was in words and figures following, to wit: [14]

No. 82.	U. S. Navy Pay Office,
	Seattle, Washington, May 26th '08.
United States Depository.	The Seattle National Bank, Seattle, Washington.
State Object for which Drawn.	United States Depository.
Zincs. 1725.	order Pay to Fowler Metal Co. or bearer Seventy four hundred and seventeen 09/100 Dollars. \$7417.09/00
	ROBERT H. ORR, Paymaster, U. S. N.

and on the back of said check was the following:

“Pay to the order of E. Silverstone,

FOWLER METAL CO.

Pr. E. S. FOWLER,

Tres. & Mgr.”

and the said Emar Goldberg so having said check in his possession at the time and place aforesaid, within the Western District of Washington, and within the jurisdiction of this court, with fraudulent intent, did knowingly deliver and cause to be delivered said check to one E. Silverstone.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said E. Silverstone, on or about the first day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a certain

obligation and security of the United States, to wit, a certain check drawn by an authorized officer of the United States, to wit, Robert H. Orr, as Paymaster of the United States Navy Pay Office, Seattle, Washington, upon the Seattle National Bank, Seattle, Washington, a United States depository, which said check was in words and figures following, to wit: [15]

	No. 82.	U. S. Navy Pay Office,
		Seattle, Washington, May 26th '08.
United States	The Seattle National Bank, Seattle, Washington.	
Depository.		United States Depository.
State Object		order
for which		
Drawn.	Pay to Fowler Metal Co. or bearer	Seventy
Zincs. 1725.	four hundred and seventeen 09/100 Dollars.	
	\$7417.09/00	ROBERT H. ORR,
		Paymaster, U. S. N.

and the said E. Silverstone so having said check in his possession at the time and place aforesaid, within the Western District of Washington, and within the jurisdiction of this court, did write upon the back of said check a certain endorsement of the following tenor, to wit: "E. Silverstone."

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said E. Silverstone, on or about the first day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a certain obligation and security of the United States, to wit, a certain check drawn by an authorized officer of the United

States, to wit, Robert H. Orr, as Paymaster of the United States Navy Pay Office, Seattle, Washington, upon the Seattle National Bank, Seattle, Washington, a United States depository, which said check was in words and figures following, to wit: [16]

No. 82.

U. S. Navy Pay Office,

Seattle, Washington, May 26th '08.

United States
Depository.

The Seattle National Bank, Seattle, Washington.

United States Depository.

State Object
for which
Drawn.

order

Zines. 1725.

Pay to Fowler Metal Co. or ~~bearer~~ Seventy
four hundred and seventeen 09/100 Dollars.

\$7417.09/00

ROBERT H. ORR,

Paymaster, U. S. N.

and the said E. Silverstone so having said check in his possession at the time and place aforesaid, within the Western District of Washington, and within the jurisdiction of this court, did deposit and cause to be deposited said check in the First National Bank of Seattle, Washington, for the credit of the said E. Silverstone.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said E. Silverstone, on or about the first day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, did issue and cause to be issued a check drawn on the First National Bank of Seattle, Washington, payable to the order of the Great Western Smelting and Refining Company, in the sum of Seven Thousand Four Hundred and Seventeen and 09/100 Dol-

lars (\$7417.09), and signed by himself and delivered, and caused to be delivered said check on said date to one Emar Goldberg.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to [17] effect the object of the same, one Emar Goldberg, on or about the 1st day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a check issued and signed by E. Silverstone and drawn on the First National Bank of Seattle, Washington, payable to the order of the Great Western Smelting and Refining Company, in the sum of Seven Thousand Four Hundred and Seventeen and 09/100 Dollars (\$7417.09), and so having said check in his possession, did then and there endorse on the back of said check the name of the payee thereof, to wit: Great Western Smelting and Refining Company, and did then and there deposit said check to the credit of the Great Western Smelting and Refining Company in the National Bank of Commerce, Seattle, Washington; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

ELMER E. TODD,

United States Attorney.

CHARLES T. HUTSON,

Assistant United States Attorney.

Witnesses examined before grand jury:

Henry de F. Mel,	Ezra Fowler,
A. W. Barnes,	E. W. Brownell,
C. A. Philbrick,	L. H. Garrodd,
H. S. House,	George French. [18]
W. P. Showve,	

[Indorsed]: The United States vs. Edwin F. Meyer et al. Indictment for Vio. Section 5440 R. S. A True Bill. F. B. Hubbard, Foreman Grand Jury. Filed U. S. Circuit Court, Western District of Washington. May 31, 1911. Saml. D. Bridges, Clerk. Presented to the Court by the Foreman of the Grand Jury, in open court, in the presence of the Grand Jury, and filed in the U. S. Circuit Court May 31, 1911. Saml. D. Bridges, Clerk. Filed U. S. Circuit Court, Western District of Washington, Nov. 6, 1911. James C. Drake, Clerk. B. O. Wright, Deputy. [19]

*In the Circuit Court of the United States for the
Western District of Washington, Western Division,
at Tacoma.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER et al.,

Defendants.

Arraignment of Defendant Edwin F. Meyer.

The defendant, Edwin F. Meyer, appearing in

open court at this time, in his own proper person for arraignment under the indictment heretofore returned against him, and said indictment having been duly read and explained to him, and being interrogated as to his name, he answered that his true name is as in the said indictment stated.

It is now ordered that this cause be and the same is hereby continued two weeks for plea.

Whereupon the defendant entered into the following recognizance, to wit:

[Indorsed]: Journal "F," page 511. [20]

*In the United States Circuit Court for the Western
District of Washington, Western Division.*

No. 1814.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER,

Defendant.

Arraignment of Defendant Emar Goldberg.

The defendant, Emar Goldberg, appearing in open court in his own proper person at this time, for arraignment under the indictment heretofore returned against him, and the said indictment having been read and explained to him, and being interrogated as to his true name, he answered that his true name is as in the said indictment stated. It is now ordered that the plea of the defendant, Emar Goldberg, be, and the same is hereby, continued four weeks.

Whereupon, the said defendant entered into the following recognizance in open court.

[Indorsed]: Journal "F," page 511. [21]

No. 1814.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER et al.,

Defendants.

Pleas of "Not Guilty" of Defendants Edwin F. Meyer and Emar Goldberg.

The above-named defendant, Edwin F. Meyer, appearing in open court at this time, in his own proper person for plea to the indictment heretofore returned against him, and being interrogated as to his plea, he answered that he was not guilty as charged in said indictment.

The above-named defendant, Emar Goldberg, appearing in open court at this time in his own proper person, for plea to the indictment heretofore returned against him, and being interrogated as to his plea, he answered that he is not guilty as charged in said indictment.

Dated August 11, 1911.

[Indorsed]: Journal "F," page 534. [22]

*In the Circuit Court of the United States for the
Western District of Washington, Southern Di-
vision.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL,
EMAR GOLDBERG, W. A. COOPER and
E. SILVERSTONE,

Defendants.

Motion for Transfer of Cause.

Come now the defendants in the above-entitled cause, Edwin F. Meyer appearing by his attorney, Andrew R. Black, Esq.; Emar Goldberg appearing by his attorneys, Messrs. Kerr & McCord; W. A. Corder appearing by his attorney, Charles A. Spirk, Esq.; and E. Silvertone appearing by his attorney, Charles H. Winders, Esq., and most respectfully represent and show the Court:

That the matters and things charged in the indictment in the above-entitled cause are alleged to have been committed within the counties of King and Kitsap in the State of Washington, or within the Northern Division of the Western District of said State; that all of the parties charged in said indictment are residents either of the County of King or the County of Kitsap, aforesaid, and that all or nearly all of the witnesses required in said cause are residents of one or the other of said counties, and that the convenience

of said parties and witnesses will be best subserved if the said cause is removed from the Southern to the Northern Division of said District.

Wherefore, by reason of the foregoing, the defendants move the Court for an order transferring and removing said cause from the Circuit Court of the United States for the Western District of Washington, Southern Division, sitting at Tacoma, to the said Circuit Court of the United States for the Northern Division of said District, sitting at Seattle. [23]

ANDREW R. BLACK,

Attorney for Edwin F. Meyer.

KERR & McCORD,

Attorneys for Emar Goldberg.

CHARLES A. SPIRK,

Attorney for W. A. Corder.

C. H. WINDERS,

Attorney for E. Silverstone.

[Indorsed]: Filed U. S. Circuit Court, Western District of Washington. Aug. 11, 1911. Saml. D. Bridges, Clerk. Filed U. S. Circuit Court, Western District of Washington. Nov. 6, 1911. James C. Drake, Clerk. B. O. Wright, Deputy. [24]

*In the Circuit Court of the United States for the
Western District of Washington, Western Division,
Ninth Judicial Circuit.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff.

vs.

EDWIN F. MEYER et al.,

Defendants.

**Order [Transferring Cause to Northern Division of
Circuit Court].**

On application of the defendants and by consent of the District Attorney, it is by the Court ordered that the above-entitled action be, and the same is hereby, transferred to the Northern Division of this court holding terms at Seattle.

Done in open court this 29th day of September,
A. D. 1911.

FRANK H. RUDKIN,

Judge.

[Indorsed]: Order Filed U. S. Circuit Court,
Western District of Washington. Sep. 29, 1911.
Saml. D. Bridges, Clerk. Filed U. S. Circuit Court,
Western District of Washington. Nov. 6, 1911.
James C. Drake, Clerk. B. O. Wright, Deputy.
[25]

United States District Court for the Western District of Washington.

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER et al.,

Defendants.

Appearance [of Attorneys for Emar Goldberg].

To the Clerk of the Above-entitled Court:

You will please enter our appearance as attorneys for Emar Goldberg in the above-entitled cause, and service of all subsequent papers, except writs and process, may be made upon said Kerr & McCord and Bert Schlesinger, by leaving the same with

BERT SCHLESINGER.

KERR & McCORD.

Office Address: 1309 Hoge Bldg.,

Seattle, Wash.

NOTICE: Attorneys Will Please Endorse Their
Own Filings. Rule 11.

[Indorsed]: Appearance. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 24, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [26]

United States District Court for the Western District of Washington.

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL,
EMAR GOLDBERG, W. A. CORDER, E.
SILVERSTONE,

Defendants.

Appearance [of Attorneys for Edwin F. Meyer].

To the Clerk of the Above-entitled Court:

You will please enter our appearance as attorneys for Edwin F. Meyer in the above-entitled cause, and service of all subsequent papers, except writs and process, may be made upon said attorneys, by leaving the same with

MORRIS & SHIPLEY and
ANDREW R. BLACK.

Office Address: Haller Block,
Seattle, Wn.

NOTICE: Attorneys Will Please Endorse Their
Own Filings. Rule 11.

[Indorsed]: Appearance. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 27, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [27]

*In the District Court of the United States for the
Western District of Washington.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER, EMAR GOLDBERG and W.
A. CORDER et al.,

Defendants.

Verdict.

We, the jury in the above-entitled cause, find the
defendant Edwin F. Meyer is guilty.

ADOLF WATSON,

Foreman.

[Indorsed]: Verdict. Filed in the U. S. District
Court, Western Dist. of Washington, Northern Divi-
sion. Nov. 12, 1913. Frank L. Crosby, Clerk. By
E. M. L., Deputy. [28]

*In the District Court of the United States for the
Western District of Washington.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER, EMAR GOLDBERG and W.
A. CORDER et al.,

Defendants.

Verdict.

We, the jury in the above-entitled cause, find the defendant Emar Goldberg is guilty.

ADOLF WATSON,

Foreman.

[Indorsed]: Verdict. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 12, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [29]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER et al.,

Defendants.

Order Fixing Bond of Defendants.

Now, on this day, it is ordered by the Court that bonds for Defendants Edwin F. Meyer and Emar Goldberg be, and they are hereby, fixed at \$5,000.00 for each defendant, and they are allowed until Thursday, November 13, 1913, to furnish same, and allowed to remain at liberty until that time, their counsel, James A. Kerr and Silas M. Shipley, agreeing to be responsible for said defendants and to have them in court at that time.

Dated November 12, 1913.

Journal 3, page 323. [30]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2039.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,

Defendants.

**Order [Extending Time to December 22, 1913, to
File Proposed Bill of Exceptions].**

The above-entitled cause coming on to be heard on the application of the defendants, Edwin F. Meyer and Emar Goldberg, for an extension of time within which to prepare and file in this court the defendants' Bill of Exceptions, Messrs. Morris & Shipley appearing for the defendant, Edwin F. Meyer and Bert Schlesinger and Kerr & McCord, appearing for the defendant Emar Goldberg, and Clay Allen, Esq., United States District Attorney, appearing for the United States of America, after hearing the arguments of counsel and being well and sufficiently advised in the premises, the Court does hereby

Order and direct that the defendants do have 30 days from this 22d day of November, 1913, within which to prepare and file in this court, their proposed Bill of Exceptions.

Done in open court this 22d day of November,
A. D. 1913.

EDWARD E. CUSHMAN,

Judge.

[Indorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 22, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputv. [31]

*In the District Court of the United States, in and for
the Western District of Washington.*

No. 2039.

UNITED STATES OF AMERICA,

vs.

EMAR GOLDBERG, EDWIN F. MEYER et al.,
Defendants.

Motion to Arrest Judgment.

The defendants, Emar Goldberg and Edwin F. Meyer, in the above-entitled cause, before judgment, respectfully move the Court that for error appearing on the face of the indictment and upon the face of the record, that judgment for the United States of America, be arrested and withheld, and conviction herein rendered be declared null and void.

Said motion is based on the following grounds:

(1) That the indictment herein fails to charge the offense of conspiracy to defraud the United States.

(2) That the indictment does not state facts sufficient to constitute a public offense against the laws of the United States.

(3) That the indictment fails to charge any offense against the laws of the United States. [32]

(4) That the indictment fails to charge a combination or conspiracy to violate any law of the United States.

(5) That the indictment fails to set forth any act in violation of Section 5440 of the Revised Statutes of the United States committed within three years prior to the filing thereof.

(6) That the indictment affirmatively shows that the alleged violation of Section 5440 of the Revised Statutes was committed and completed on the 26th day of May, 1908, and said indictment was not presented until the 31st day of May, 1911.

(7) That the indictment shows that the last overt act to effect the object of the alleged conspiracy was committed on the 26th day of May, 1908, or prior thereto.

(8) That the indictment shows that no overt act occurred within three years of the finding of the indictment herein.

(9) That the indictment shows upon its face that the alleged offense was barred by Section 1044 of the Revised Statutes of the United States.

(10) That the said indictment was and is void under Section 1044 of the Revised Statutes of the United States.

(11) That the said indictment was found contrary to Section 1044 of the Revised Statutes of the United States.

(12) That the said indictment was not found within three years next after said alleged offense was committed. [33]

(13) That said indictment shows upon its face that the alleged offense was completed on the 26th day of May, 1908, when the check set out in said indictment was actually issued.

(14) That said indictment fails to set forth any overt act as required by Section 5440 of the Revised Statutes.

(15) That said indictment is void in this that the time of said conspiracy is laid as on or about the 2d day of June, 1908, and the alleged overt acts therein set forth are alleged to have occurred prior to that date.

WHEREFORE, for error appearing on the face of the indictment and upon the face of the record the defendants pray that the judgment upon the verdict be arrested and withheld and conviction herein declared to be null and void.

Dated November 29th, 1913.

BERT SCHLESINGER,
KERR & McCORD,
MORRIS & SHIPLEY,
ANDREW R. BLACK,

Attorneys for Defendants Emar Goldberg and Edwin F. Meyer.

Due service and receipt of a copy of the within Motion is hereby admitted this 29th day of Nov., 1913.

CLAY ALLEN,
For Pltf.

[Indorsed]: Motion to Arrest Judgment. Filed in the U. S. District Court, Western Dist. of Washington. Nov. 29, 1913. Frank L. Crosby. By E. M. Lakin, Deputy. [34]

**[[Order Overruling Motion in Arrest of Judgment
and Denying Motion for New Trial.]**

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER et al.,

Defendants.

Hearing.

This matter coming on to be heard upon the de-
fendants' motion in arrest of judgment and motion
for new trial, and statement of defendants' counsel,
and the Court being fully advised, overruled motion
in arrest of judgment and denied motion for new
trial. Exception is allowed on each motion.

Dated November 29, 1913.

Journal 3, page 337. [35]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,

Defendants.

Sentence of Emar Goldberg.

Comes now on this 29th day of November, 1913, the said defendant Emar Goldberg, into open court for sentence, and being informed by the Court of the indictment herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, he nothing says save as he before hath said.

Wherefore, by reason of the law and the premises, it is considered by the Court, that the said defendant, Emar Goldberg, be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States, for the term of fifteen months, at hard labor, from and after this date. And that he pay a fine of Two Thousand Dollars, and that he be further imprisoned in the said United States Penitentiary until such fine is paid or until he shall be otherwise discharged by due process of law.

And the said defendant Emar Goldberg is now hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Dated November 29, 1913.

[Indorsed]: Judgments and Decrees, 1, page 385.

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER et al.,

Defendants.

Sentence of Edwin F. Meyer.

Comes now on this 29th day of November, 1913, the said defendant Edwin F. Meyer, into open court for sentence, and being informed by the Court of the indictment herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, he nothing says save as he before hath said.

Wherefore, by reason of the law and the premises, it is considered by the Court, that the said defendant Edwin F. Meyer be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States, for the term of fifteen months, at hard labor, from and after this date. And that he pay a fine of Two Thousand Dollars, and that he be further imprisoned in the said United States Penitentiary until such fine is paid, or until he shall be otherwise discharged by due process of law.

And the said defendant, Edwin F. Meyer, is now hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Dated November 29, 1913.

[Indorsed]: Judgments and Decrees, 1, page 385.
[37]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,

Defendants.

**Order Extending Time to [January 21, 1914, to] File
Bill of Exceptions.**

This cause coming on to be heard this 17th day of December, A. D. 1913, upon the application of the attorneys for the defendants above named, for an extension of time within which to prepare, serve and file their bill of exceptions, Bert Schlesinger and Messrs. Kerr & McCord and Messrs. Morris & Shipley, appearing as attorneys for the defendants, and Clay Allen, Esq., United States District Attorney, appearing for the plaintiff and consenting to said application for additional time.

It is now by the Court ordered that the time within which to prepare, serve and file the defendants' bill of exceptions heretofore fixed by the Court

at thirty days from November 22, 1913, be and the same is hereby extended for an additional thirty days, or at sixty days from November 22, 1913.

JEREMIAH NETERER,
Judge.

O. K.—CLAY ALLEN,
Atty. for Pltf.

[Indorsed]: Order Extending Time. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 17, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [38]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2039.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

EMAR GOLDBERG, EDWIN F. MEYER et al.,
Defendants.

**Order [Extending Time to February 20, 1914, to File
Bill of Exceptions].**

This cause coming on to be heard upon the application of the defendants for a further extension of time within which to prepare, serve and file their bill of exceptions on the appeal of the above-entitled cause, Clay Allen, Esq., United States District Attorney, appearing for the plaintiff, and Messrs. Morris & Shipley, Bert Schlesinger, Esq., and Messrs.

Kerr & McCord appearing for the defendants, it is now by the Court

Ordered, that the time within which the defendants may prepare, serve and file their bill of exceptions in the above-entitled cause be, and the same is, hereby extended for an additional period of thirty days, the time for filing said bill of exceptions having been heretofore extended by order of this Court for a period of sixty days.

JEREMIAH NETERER,
Judge.

[Indorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 5, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [39]

**[Admission of Service of Proposed Bill of
Exceptions.]**

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2039.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL, EMAR
GOLDBERG, W. A. CORDER, and E. SIL-
VERSTONE,

Defendants.

Due service and receipt of a copy of Proposed Bill of Exceptions on behalf of defendants, Edwin F. Meyer and Emar Goldberg, numbered Vol. 1, pages 1 to 147, inclusive, Vol. 2, pages 148 to 294, inclusive, Vol. 3, pages 295 to 452, inclusive, Vol. 4, pages 453 to 646, inclusive, Vol. 5, pages 647 to 786, inclusive, Vol. 6, pages 787 to 945, inclusive, Vol. 7, pages 946 to 1100, inclusive, and Vol. 8, pages 1101 to 1255, inclusive, is hereby admitted this 27th day of January, 1914.

CLAY ALLEN,
United States Attorney.

[Indorsed]: Admission of Service of Proposed Bill of Exceptions on Behalf of Defendants Meyer and Goldberg. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 27, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [40]

**[Stipulation Waiving Printing of All Exhibits and
for Transmission of Original Exhibits to Appel-
late Court.]**

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2039.

THE UNITED STATES OF AMERICA,

Plaintiff,

VS.

EDWIN F. MEYER, J. A. KETTLEWELL, EMAR
GOLDBERG, W. A. CORDER and E. SIL-
VERSTONE,

Defendants.

It is hereby stipulated and agreed that it shall not be necessary to print in the Bill of Exceptions nor in the transcript on appeal in the above-entitled cause all the exhibits introduced in evidence by the Government in said cause numbered 1 to 87, inclusive, and 29-A, 29-B and 3-A, and all the exhibits introduced in evidence in said cause by said defendants and numbered A to X, inclusive, XX, Y, Z and A-1 to A-109, inclusive, but that the Clerk of the above-entitled Court may annex the originals of said exhibits to said transcript on appeal and the same may be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit and may be used on the hearing of said appeal with the same force and effect as though the same were inserted *verbatim* in said Bill of Exceptions and in said transcript on appeal.

The intent of this stipulation is that all of the exhibits on the part of the Government and the said defendants need not be printed, but shall be annexed by the Clerk to the transcript on appeal and transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

Dated January 27, 1914.

CLAY ALLEN,
United States Attorney.
MORRIS & SHIPLEY, and
ANDREW R. BLACK,
Attorneys for Defendant, Edwin F. Meyer.
KERR & McCORD,
BERT SCHLESINGER,
Attorneys for Deft. Emar Goldberg. [41]

[Indorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 27, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [42]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 2039.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL, EMAR
GOLDBERG, W. A. CORDER and E. SIL-
VERSTONE,

Defendants.

**Order [Directing Transmission of Original Exhibits
to Appellate Court, etc.]**

It appearing from the stipulation entered into between the United States attorney and the attorneys for the defendants, Edwin F. Meyer and Emar Gold-

berg, on file herein, that all the exhibits introduced in evidence by the Government in the above-entitled cause and numbered 1 to 87, inclusive, and 29-A, 29-B, and 3-A, and the exhibits introduced in evidence in said cause by said defendants and numbered A to X, inclusive, XX, Y, Z and A-1 to A-109, inclusive, need not be printed, but that the Clerk of this Court may attach the originals of said exhibits to the Transcript on Appeal in said cause to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit to be used on the hearing of said appeal. On motion of the attorneys for said defendants and good cause appearing therefor;

It is ordered that the Clerk of this Court annex the originals of all exhibits to the transcript on appeal and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco, State of California, to be used on the hearing of said appeal with the same force and effect as though said exhibits were inserted *verbatim* in said Transcript on Appeal.

Dated January 27, 1914.

JEREMIAH NETERER,

Judge of the District Court of the United States, in
and for the Western District of Washington,
Northern Division.

O.K.—CLAY ALLEN,

District Atty. [43]

[Indorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 27, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [44]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,

Defendants.

**Stipulation [for Omission from Bill of Exceptions of
Exhibits not Introduced in Evidence, etc.].**

Whereas, it appears that certain of the exhibits mentioned in the stipulation of the parties hereto, and the order of the Court, both dated and filed on the 27th day of January, 1914, were not introduced in evidence, and certain others were withdrawn before the submission of the case to the jury;

It is stipulated by the parties hereto, by their respective attorneys, that the exhibits which shall be attached to the bill of exceptions herein, and transmitted to the Circuit Court of Appeals, shall be all the exhibits introduced in evidence and submitted to the jury and now in the custody of the clerk, but that it shall not be necessary to attach to the bill of exceptions or transmit to the Circuit Court of Appeals any exhibit which was not introduced in evidence and submitted to the jury.

Dated this — day of April, 1914.

CLAY ALLEN,
U. S. District Attorney.
MORRIS & SHIPLEY, and
ANDREW R. BLACK,
BERT SCHLESINGER, and
KERR & McCORD,
Attorneys for Defendants.

[Indorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 11, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [44A]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,
Defendants.

**Order [for Omission from Bill of Exceptions of
Exhibits not Introduced in Evidence, etc.].**

It appearing to the Court that certain of the exhibits mentioned in the order of the Court herein, dated and filed on January 27, 1914, were not introduced in evidence, and certain others were withdrawn before the submission of the case to the jury,

and the Court having read the stipulation of the parties hereto;

It is hereby ordered that the exhibits which shall be attached to the bill of exceptions herein, and transmitted to the Circuit Court of Appeals shall be all the exhibits introduced in evidence and submitted to the jury and now in the custody of the clerk, but that it shall not be necessary to attach to the bill of exceptions or transmit to the Circuit Court of Appeals, any exhibit which was not introduced in evidence and submitted to the jury.

Done in open court this 11th day of April, 1914.

JEREMIAH NETERER,

Judge.

O. K.—ALLEN,

District Atty.

[Indorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 11, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [44B]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,
Defendants.

Stipulation [Extending Time for Settlement of Bill of Exceptions, etc.].

It is stipulated and agreed between the above-named parties by their respective attorneys as follows:

That the original proposed bill of exceptions heretofore served by plaintiff upon the United States Attorney in this cause, which has been delivered to the Clerk of said Court, may be held by the Clerk and not submitted to the Judge for settlement for the period of 15 days, in order to enable said United States Attorney to have additional time for examination thereof, and that the time for the settlement and filing thereof be extended for such purpose.

It is further stipulated that the petition for writ of error on behalf of defendants and the assignments of error prepared by defendants for filing in said cause shall be withheld and may be filed at any time after the settlement of said proposed bill of exceptions within the period allowed by statute for the suing out of writs of error, it being the intention of this stipulation that said petition for writ of error and assignments of error be filed immediately following the settlement and filing of the bill of exceptions as above stipulated.

Dated February 11, 1914.

CLAY ALLEN,
Attorney for Plaintiff. [45]
BERT SCHLESINGER and
JAMES A. KERR,
MORRIS & SHIPLEY and
ANDREW R. BLACK,
Attorneys for Defendants.

[Indorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 11, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [46]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 2039.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

EDWIN F. MEYER and EMAR GOLDBERG,
Defendants.

**Order [Allowing Plaintiff Until March 10, 1914, to
File Amendments to Bill of Exceptions].**

Upon the oral motion of the United States Attorney, it appearing that a stipulation has been entered into between the attorneys for the plaintiff and defendants in the above-entitled cause, to the effect that the plaintiff herein may be given until March 10, 1914, within which to propose and file

any proposed amendments to the Bill of Exceptions filed herein; it is hereby ordered that the plaintiff may have until March 10, 1914, within which to propose and file any proposed amendments to the Bill of Exceptions filed herein.

Dated this 25th day of February, 1914.

JEREMIAH NETERER,

Judge.

[Indorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 25, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [47]

*In the District Court of the United States, in and for
the Western District of Washington, Northern
Division.*

No. 2039.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL, EMAR
GOLDBERG, W. A. CORDER and E. SIL-
VERSTONE,

Defendants.

**Bill of Exceptions on Behalf of Edwin F. Meyer and
Emar Goldberg.**

BE IT REMEMBERED, that heretofore, the Grand Jury of the United States, in and for the Western District of Washington, did find and return in, to and before the above-entitled court its indictment against the defendants, Edwin F. Meyer and

Emar Goldberg, and thereafter the said Edwin F. Meyer and Emar Goldberg appeared in said court, and upon being called to plead to said indictment, entered their plea of not guilty.

AND BE IT FURTHER REMEMBERED, that the said defendants having duly pleaded not guilty, as shown by the record herein, and the cause being at issue, the same came on for trial before the Honorable Jeremiah Neterer, District Judge of said Court, and a jury duly impaneled, the United States being represented by Clay Allen, Esq., United States District Attorney, and Charles F. [48*—1†] Riddell, Esq., Special Prosecutor, and the defendant, Edwin F. Meyer, being represented by Morris & Shipley and Andrew R. Black, Esq., and the defendant, Emar Goldberg, being represented by James A. Kerr, Esq., and Bert Schlesinger, Esq., the following proceedings were had:

The United States Attorney made an opening statement of the case to the jury. The plaintiff to maintain the issues, on its part to be maintained, introduced and offered in evidence the following testimony, to wit:

[Testimony of Ray Spear, for Plaintiff.]

RAY SPEAR, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

My name is Ray Spear. I am a paymaster in the

*Page-number appearing at foot of page of certified Transcript of Record.

†Original page-number appearing at foot of page of Bill of Exceptions as same appears in Certified Transcript of Record.

(Testimony of Ray Spear.)

United States Navy. My rank is Lieutenant-Commander. I reside and am stationed on duty, at present, at Norfolk, Virginia. From the 2d day of January, 1908, until about the middle of August, 1910, I was on duty at the Bremerton Navy Yard, Bremerton, Washington. My principal duty was general storekeeper. I recognized that as being the position I filled, but I had numerous other duties from time to time.

The duties of a general storekeeper at a Navy Yard has to do with the custody of all material and supplies received on the yard and issued from the yard; that is for manufacturing purposes in the yard and to vessels that may come there to the yard.

We have a regular published volume called, "Articles for the Government in the United States Navy and Naval Regulations" that comes out in bound form about every five years, or such time as the Secretary of the Navy may direct it to be republished [49—2] and such corrections as he may see fit. This is the regulation for the Government of the United States Navy for 1909. It has since been superseded by new regulations. The regulations of 1905 were in effect in 1908, but there may be minor changes between the regulations as existed in 1909 and those which existed in 1908.

Mr. VANDERVEER.—Objection to that as not material.

The COURT.—He may answer the question. Exception.

A. (Witness continuing.) There may be minor

(Testimony of Ray Spear.)

changes, but in the main they are just the same.

Mr. ALLEN.—Mark it for identification, if you please.

(Book referred to marked Plaintiff's Exhibit 1 for identification.)

Q. I will ask you, Mr. Spear, whether or not this Navy Blue Book—is that what you call it?

A. Well, we call it the Bible. Well, this Bible of the Navy, whether or not that offers anything more than simply general instructions which cover the duties of officers generally?

Mr. SCHLESINGER.—One moment. To that we certainly object on the ground that the book speaks for itself and is the very best evidence of its own contents, and the question calls for the opinion or understanding of the witness, and is not competent for that reason.

The COURT.—The witness may state what construction is placed upon these provisions and what is done under them.

Mr. SCHLESINGER.—Note an exception.

A. The instructions in the Naval Regulations are merely general and are supplemental from time to time by general orders that are issued weekly and monthly and from time to time as the secretary directs.

Mr. ALLEN.—And they would be no part of this particular Blue Book, [50—3] this Bible of the Navy?

A. Well, they have to be taken in connection with that Blue Book.

(Testimony of Ray Spear.)

Q. But I mean to say they are not included in that book?

A. No, sir. We keep a separate file of them.

Q. When you came to your post at Bremerton, state to the jury just what employees you found there in the United States employ in the Storekeeper's Office there.

A. Well, first I found Mr. Meyer, who had—

Q. What was his position?

A. Of Principal Clerk and acting as Chief Clerk of my office.

Q. Who else was in there, Mr. Spear, that you remember of?

A. We had Mr. Ames, as I remember, was the bookkeeper, and Mr. Holt, and Mr. Tichenor, and Mr. Lewis in the office proper—we had two Lockwood brothers were storemen in the storehouse.

Q. Which one of the Lockwoods, if either, was in charge of the metal storehouse there?

A. I believe it is George Lockwood, sir.

Q. He was in the employ of the Navy Department at that time during the beginning of 1908 down until the time you left the navy yard? A. Yes, sir.

Q. As a matter of fact, he is still in the employ of the navy in the same position, is he not?

A. I believe so.

Q. I believe you mentioned Mr. Tichenor and Mr. Holt. Mr. McNeil, was he with you at that time?

A. I don't remember whether Mr. McNeil was there when I reported for duty or not; he came there during my time at least.

(Testimony of Ray Spear.)

Q. You remember a man by the name of Dannan?

A. Yes, sir. [51—4]

Q. You remember, of course, both the Lockwoods?

A. Yes, sir.

Q. When did Mr. Barnes come on the job?

A. It was in the late summer or early fall of 1908, sometime after the battleship fleet left. I don't know the exact date.

Q. As Principal Clerk of your office while you were Paymaster in charge, state to the jury the duties of Mr. Meyer, the Principal Clerk.

Mr. VANDERVEER.—This is a matter presumably to be covered by the printed regulations, and the regulations themselves are the best evidence. And while I am on my feet, it has been agreed by all of counsel for the defendants that any objection made by any one of them will be considered as general unless specifically restricted, considered as as made by all, in other words, to avoid confusion.

The COURT.—He may answer.

Mr. VANDERVEER.—Note an exception.

Q. As a matter of fact, Mr. Spear, does the Naval Blue Book make any reference to the duty of Principal Clerk, except probably to define the fact as to who shall appoint him and matters of that kind?

A. Well, there is a supplementary regulation covering general storekeeping departments of the navy which has been approved by the Secretary of the Navy, which, in the main, governs the duties of Chief Clerk in the Storekeeper's Office.

Q. But his duty—

(Testimony of Ray Spear.)

A. His duty is whatever duty the General Storekeeper assigns him.

Q. He is directly under your orders, and obeys such instructions as you may give him and do such work you may direct him to do? A. Yes.

Q. What were his duties, then, under your direction while he was your principal clerk with reference to the sending out of requisitions [52—5] from your office?

Mr. SCHLESINGER.—Now, if your Honor please, this is certainly a vital part of his indictment, and if these duties are prescribed by the chief official of the Navy Department and appear either in a printed or written book known as a book of rules or regulations, this jury is entitled to have that book, and the book would be the best and only evidence, and not the understanding of the witness upon the stand. On that ground we object to that again.

The COURT.—I understand from the testimony of the witness the duties are not prescribed by any regulations of any kind; that is, the duties of his profession were defined by a supplemental order to this book, but the duties of the clerk were not defined, but were under the direction of the person occupying his position.

Mr. SCHLESINGER.—I didn't understand that.

The COURT.—Let the witness state again or repeat.

A. The duties of the chief clerk have been outlined as the approved system of organization in this book, but it is not necessarily confined to that, to

(Testimony of Ray Spear.)

those instructions. There is a great deal of discretion left with the general storekeeper what he should do.

Mr. SCHLESINGER.—That is the very point.

The COURT.—Finish the answer.

The WITNESS.—I think I finished, sir.

The COURT.—I think that the supplemental order should be here, if there is one.

Mr. ALLEN.—Can you obtain, Mr. Spear, for the Court a copy of any supplemental order that would cover the movements or actions of the Principal Clerk in your office at that time?

A. I don't know whether it would be referred to as Principal Clerk; it would be referred to as Chief Clerk probably in the instruction [53—6] book. Undoubtedly that book exists over to the navy yard.

Mr. ALLEN.—I will ask you as to the actual fact in the operation of the Army and Navy of the United States, as to whether or not a book of directions, general in character and general in tone, which suggests the operation of any particular branch of the service, isn't within the control and direction of the officers charged with the responsibility of controlling that? A. Yes, sir.

Q. Mr. Spear, state to the Court and jury what duties did he perform there in your office.

Mr. SCHLESINGER.—Just a minute. Your Honor please, so as to be consistent, we object to that question upon the ground that the printed rules or regulations would be the best and only evidence, and the question calls for an understanding of the

(Testimony of Ray Spear.)

witness, and hence is not competent nor binding upon any one of these defendants. We have a book of instructions; the book ought to be produced.

The COURT.—He may answer what duties.

Mr. SCHLESINGER.—Exception.

The COURT.— —his clerk, whatever he performed under these instructions or supplemental orders, with the understanding the supplemental order will be supplied later.

A. He was acting as chief clerk of my office and chief of the requisition section, the stock upkeep section, that is.

Mr. ALLEN.—What were his duties as chief clerk and requisition clerk?

Mr. SCHLESINGER.—Your Honor, may this go in under our general objection subject to our running exception?

The COURT.—Yes. [54—7]

A. (Continuing.) He had general charge of the mail, papers that passed through the office, such as any chief clerk in a large office would have; the routing of this correspondence to the different desks. They were his principal duties as chief clerk. He had also considerable correspondence, that is, original correspondence, to handle, and, as chief and head of the requisition section, he had general charge of the storemen out in the storehouses, the quantity and amounts of material that was on hand, and he could originate a requisition himself, that is, subject to whatever instructions I desired to give him, any item that was short in stock.

(Testimony of Ray Spear.)

Q. What were his duties with reference to the preparation of requisitions to supply deficiencies, or alleged deficiencies, in stock for material that might be on hand?

A. He was supposed to acquaint himself with the quantity or item of that particular article to be called for on hand at the time, and ascertain the prevailing price or the prices that they had paid for similar articles in the past. Also to judge the quantities that had been issued in the past, and then make his requisition accordingly.

Q. From what source would he obtain information with reference to the price, or estimated price, to be fixed by him in the requisition?

A. Why, it was customary to take previous purchases and prepare prices, strike the general average of that.

Q. Was the source and procedure in your office such that all requisitions and matters of that kind came from Mr. Meyer?

Mr. VANDERVEER.—Object, if the Court please, on the ground the question is leading, and upon the ground also it is immaterial what the practice of the office was at any given time. [55—8]

Mr. SCHLESINGER.—We supplement the objection, if the Court please, on the further ground that the practice is controlled by printed rules and regulations and, therefore, those would be the best evidence as to what the practices of the office are or were.

Mr. ALLEN.—He has already stated the duties

(Testimony of Ray Spear.)

this man was performing.

The COURT.—The objection is overruled. Exception.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

A. It was.

Q. I call your attention to this memorandum, this sheet, which I hold in my hand, and ask you to identify that memorandum, if you can do so.

Mr. VANDERVEER.—Is there any objection, your Honor, to the stenographer noting an exception to each of your Honor's rulings?

The COURT.—No, I understood that.

Mr. VANDERVEER.—I mean without our requesting an exception and having it allowed.

The COURT.—Yes.

Mr. VANDERVEER.—We make our objection, your Honor rules, and then we request an exception or your Honor allows it. That wastes a lot of time. The stenographer could show the exception.

The COURT.—I don't know that I would like to make that general throughout the entire trial with relation to this testimony. It may be so noted with an exception, an objection and—

Mr. VANDERVEER.—I don't mean to have him note any objection except where we urge it, but when your Honor overrules our objection the stenographer could note the exception without our requesting it each time.

The COURT.—Yes. [56—9]

Mr. SCHLESINGER.—Mr. District Attorney, I

(Testimony of Ray Spear.)

suggest there is an entire chapter here on requisitions and also on chief clerks. I shall want that book in evidence.

Mr. ALLEN.—State to the Court and jury what that memorandum is, if you can identify it.

A. This paper which I hold in my hand is a sheet taken from the old stock ledger books which was at the navy yard in 1908. They have since been superseded by a different method of accounting, but this is the only itemized account of items kept in the main office at the time. We had stock cards in addition to these out in the storehouses.

Q. I believe you had stated it was the duty of Mr. Meyer, the Principal Clerk, to familiarize himself with prices as they have gone before or by purchases of material made in the yard, is that true?

A. Yes.

Mr. ALLEN.—I now offer in evidence, your Honor, the general stock memorandum—

Mr. MORRIS.—Will you let us see that?

Mr. ALLEN.—This is a memorandum which shows the purchase, or purports to show—

Mr. SCHLESINGER.—Which part do you offer?

Mr. ALLEN.—The first page is offered.

Mr. SCHLESINGER.—We have no objection to this, Mr. District Attorney.

Mr. ALLEN.—We offer this in evidence.

The COURT.—Admitted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit No. 2.)

Mr. SCHLESINGER.—Of course, you only claim

(Testimony of Ray Spear.)

that relates to four [57—10] selected transactions?

Mr. ALLEN.—No, sir, not selected—I will ask Mr. Spear what four purchases, referring to that for your information, what four purchases, if that is taken from your ledger, would this show? Would that show selected purchases, or the last four, or some made five years ago, or what?

A. Would show the last four receipts, which would be the last four increases of stock. Whether they are all from purchases or not, I can't tell.

Q. The last four receipts of zinc plate of size $\frac{1}{2}$ inch by 6 by 12, is that right, as well as 12 by 36?

A. Yes, sir.

Mr. MORRIS.—Mr. Allen, may I ask the witness a question?

Q. Mr. Spear, can you tell from what record that paper is taken?

Mr. ALLEN.—He has already identified it.

Mr. MORRIS.—I ask permission of the Court to ask this witness a question. I have submitted the question and I would like to have an answer.

The COURT.—Read the question.

Q. (Question repeated.)

A. I have every reason to believe it is a sheet taken from our stock ledger book at Bremerton.

Mr. MORRIS.—I want to get from Mr. Spear, if I can, information that will allow us to trace this back to its original source, that is what we are after.

Mr. MORRIS.—Does that come from the invoices and Inspection Calls?

(Testimony of Ray Spear.)

A. Well, it depends on whether it is receipt or expenditure. The entire sheet is our ledger account; it is a ledger account of our items over there. [58—11]

Mr. MORRIS.—From the Inspection Call?

A. Yes, taken from various—any source; it might come from a receipted invoice from another yard, might come from purchase or contracts.

Mr. MORRIS.—Do you know where it did come from?

A. The individual items?

The COURT.—The sheet?

A. I could trace the sheet there, yes, from the record.

Mr. MORRIS.—And the sheet is taken from what place, from what record in the Storekeeper's Office?

A. In the bookkeeping section of the Storekeeper's Office.

Mr. MORRIS.—It comes from the Storekeeper's Office? A. Apparently it does.

Mr. ALLEN.—Explain to the jury the hieroglyphics or figures as you may find them on the left-hand side of that exhibit, Plaintiff's Exhibit 2.

A. Shows here on the 12th day of March, 1908, on requisition or contract 8318, which was apparently sent to the Bureau of Steam Engineering, the hieroglyphics "S. E." mean "Steam Engineering."

A. The initials "S. E." stand for "Steam Engineering," and passed on Inspection Call 1916, a certain quantity of zinc plates 12 by 16, a quantity of 50,158 pounds at .0713 cents per pound.

(Testimony of Ray Spear.)

Q. What does that indicate, now, as regards the arrival or not of material at the yard in that quantity and in that amount?

A. It would be conclusive evidence that amount had been at least passed on the Inspection Call or received on the yard.

Q. That is on what date, March what?

A. On March 12th it would appear that 50,158 pounds had passed inspection on that date, been received.

Q. The date, then, is March 12, 1908? [59—12]

A. Yes, sir.

Q. And the price is \$7.13 a hundred. The second, what does that indicate, the amount of purchase and date?

A. The second item here is, on the 25th of March, 1908, on Requisition 348, also approved by the Bureau of Steam Engineering, there was passed on Inspection Call 2067, 24 by 36 inch plates at 12½ cents a pound.

Q. Also indicate what the third item means?

A. That on the 18th day of April, 1908, on Requisition 304, which, however, was approved by the Bureau of Construction and Repair—the letters “C. R.” stand for “Construction and Repair.”

Mr. SCHLESINGER.—Approved by whom?

A. Construction and Repair; at least passed on by that Bureau, and was delivered at the yard—

Mr. SCHLESINGER.—Is that the Bureau at Washington?

A. Yes, sir. And passed on Inspection Call 2335,

(Testimony of Ray Spear.)

24 by 36 inch plates at .1109 cents a pound.

Mr. MORRIS.—That is the third item?

A. That is the third item.

Mr. ALLEN.—What does the fourth item on that sheet show?

A. On the 18th of May, 1908, on Requisition 438, passed on by the Bureau of Steam Engineering, there was delivered at the yard on Inspection 2061, 6 by 12 inch plates, quantity 59,575 pounds at \$12.45.

Q. What is the aggregate amount?

A. The aggregate amount is 59,575.

Q. What is the aggregate sum paid?

A. \$7,417.09.

Q. Mr. Spear, I call your attention to this folder which I hold [60—13] in my hand and ask you to identify it, if you are able to do so.

The COURT.—Let it be marked identification number “3.”

(Paper referred to marked Plaintiff's Exhibit Number 3 for identification.)

Mr. ALLEN.—Mr. Spear, you have examined this folder, have you which I have just presented to you? After your examination, state, if you are able to do so, what that folder is.

A. This is a folder that was in use over in my office, that is, the form was in use, and is used to file the copies of the contracts that we get from the Bureau of Supplies and Accounts covering the material delivered at the yard. Papers and correspondence and everything relating to that contract go in the folder, as you see here.

(Testimony of Ray Spear.)

Q. I ask you to examine the contents, Mr. Spear, of that folder and state—

Mr. SCHLESINGER.—Would you mind showing that to us, please?

Mr. ALLEN.—Let Mr. Spear see it first and I will do so.

Mr. MORRIS.—You are asking him what it is.

Mr. SCHLESINGER.—I think we are entitled to see it in advance, your Honor please.

Mr. ALLEN.—Very well (handing paper to counsel for defendants).

Q. These instruments which I have shown to you, both the one admitted in evidence and the one which learned counsel have now in their possession, were shown to you last by whom? Who did you find having these instruments in their possession, who had them in possession?

A. This particular paper (showing)?

Q. Yes, and these various instruments which I am showing you now and hereafter, who had them?

A. They are part of my office records. [61—14]

Q. They are part of your office records. You can identify them as such, can you? A. Yes.

Q. I was trying to find out who last showed you these instruments before you came here as a witness, what person called these instruments to your attention?

A. I don't know that I have ever seen them. There are a great many papers on file in my office that I have never seen.

Q. I am asking you whether Mr. House, or who it

(Testimony of Ray Spear.)

was, called these particular matters to your attention?

A. Since I came here Mr. House did that.

Q. And they were in Mr. House's possession at that time? A. Oh, well, I understand you.

Q. That is true of this instrument offered in evidence? A. Yes, sir.

Q. And true of this instrument I have just shown you? A. Yes, sir.

Mr. KERR.—Personally you don't know whose possession they have been in?

A. I have seen these papers since I arrived in Seattle on this trip, yes.

Mr. ALLEN.—Can you identify, from the character of the instrument, the enclosure of this folder?

A. All the enclosures?

Q. All the enclosures, the first one particularly?

A. This paper here (showing) is the original Inspection Call of 1916, that is the number of it, signed by me, and covers the delivery of 50,158 pounds of rolled sheet zinc boiler plate 12 by 6 by $\frac{1}{2}$ inch.

Q. That is signed by you and your signature? [62—15] A. Yes, sir.

Q. You recognize your signature? A. I do.

Q. Does that correspond with this first entry here, 1916 (showing)? A. Yes, sir.

Q. Could you say by comparison that refers to this (showing)?

A. I would say that refers to that item on the stock sheet, was taken up from that stock sheet.

Q. Through whose hands would that inspection re-

(Testimony of Ray Spear.)

port pass in your office?

A. Well, it would go through the Chief Clerk's hands and also the Storeman's hands.

Q. Who was the Chief Clerk to whom you refer?

A. Mr. Meyer.

Q. Did that pass through Mr. Meyer's hands, then?

A. Yes, on ordinary course of business of the office.

Q. When was that received by your office, if you can tell from an examination?

A. The material or the Call itself?

Q. That Call itself?

A. It was apparently received back from the Board of Inspection on March 17th, according to this receiving stamp.

Q. What year? A. 1908.

Q. In other words, that passed through your office on March 17th, 1908, and passed through Mr. Meyer's—across Mr. Meyer, the Principal Clerk, through his hands? A. I assume that from the record.

Q. That was the customary routine of your office?

A. Yes, sir. [63—16]

Q. Identify, if you can, any of the other instruments attached thereto.

A. This (showing) is the official form of notification used by the Bureau of Supplies and Accounts, Navy Department, Washington, D. C., to inform the General Storekeeper they have entered into a certain contract with certain parties on a certain date for material.

(Testimony of Ray Spear.)

Q. What is the material and what is the amount and price?

A. This particular one refers to a contract—

Mr. SCHLESINGER.—Your Honor please, it seems to me, if counsel intend to make the offer, that the document speaks for itself and ought to be shown to us, and then—

Mr. ALLEN.—I will withdraw the question.

Q. Can you identify that instrument as coming from your office during the time you were Paymaster there? A. Yes, sir.

Q. That has reference to both the cover and the folder attached, the slip attached?

A. The paster attached.

Mr. ALLEN.—As there will be a number of these, your Honor, I suggest they be designated as exhibits number so and so, and these various papers be indicated as “A,” “B,” “C,” and “D.”

The COURT.—All right.

Mr. RIDDELL.—Why not introduce the folder and contents as one exhibit?

Mr. ALLEN.—Very well.

The COURT.—If the contents of this folder got into some other folder they would be confused. Say Exhibit “A” and “3-A.”

Mr. ALLEN.—The folder itself, then, your Honor, will be “3.”

The COURT.—Will be “3” and the contents “3-A,” “3-B” or “3-C.”

Mr. ALLEN.—Very well. [64—17]

Mr. RIDDELL.—These papers can all be iden-

(Testimony of Ray Spear.)

tified with the particular folder by reason of the endorsement on the folders and papers themselves, and if they should be mixed it would be merely a matter of looking them over by the accountant here and placing them back in the proper folder, and save a good deal of confusion if you simply mark the folder and contents as one exhibit.

The COURT.—Yes, I think so. Proceed.

(Folder referred to marked Plaintiff's Exhibit 3 for identification.)

Mr. ALLEN.—Identify, if you can, this particular instrument, Mr. Spear (exhibiting same to witness).

A. This is a copy of—it is the original, rather, of the bill of lading under which this material was shipped out here from La Salle, Illinois.

Q. You used the expression “this material.” To what material do you refer?

A. It is quoted in the bill of lading as “200 boxes of zinc, gross weight 52,558 pounds.”

Mr. SCHLESINGER.—I submit, your Honor, he ought not to read from the paper.

Mr. ALLEN.—Well, we offer it in evidence, then, your Honor, this folder—

Mr. MORRIS.—Won't you let us see it?

Mr. ALLEN.—Yes, but I make the offer now.

Mr. SCHLESINGER.—You make the offer now, Mr. Allen?

Mr. ALLEN.—Yes, sir.

Mr. SCHLESINGER.—Your Honor please, it is not quite plain to us what the purpose of this offer

(Testimony of Ray Spear.)

is, but assume the purpose of counsel to be that he will show, or can show, by this document that certain goods were sold to the Government at a less figure, is that your [65—18] purpose, Mr. Allen?

Mr. ALLEN.—The purpose of it is, so you will understand it, and I think the Court does, that this defendant Meyer had within his means, and had actually passed under his face, this consignment, or the invoice for consignment of zinc at \$7.15 a hundred, within one month of the time of the inspection of this particular requisition.

Mr. SCHLESINGER.—Now, it seems to me, that being the purpose, the paper is clearly objectionable. The fact that at other times prior to this alleged transaction in question the Government may have paid less or greater amount for material is absolutely immaterial, not only because of the quality of material used, not only because of fluctuations in price and value, but for a variety of other reasons. It does not follow that because at some prior time another concern sold materials to the Government at a less sum, that does not establish, or tend to establish, the fact that we have made here any unconscionable or any excessive profits. Indeed, in the course of this trial we will be able to demonstrate, if we deem it at all material, that goods have been sold to the Government at a larger price than were obtained either by Mr. Corder or by the Great Western Smelting Company. Now, if your Honor please, we claim this does not tend in the remotest degree to establish a single element of this charge.

(Testimony of Ray Spear.)

The COURT.—The objection at this time will be overruled.

Mr. SCHLESINGER.—And at this time, your Honor, we will note the usual exception.

The COURT.—Exception allowed.

Mr. ALLEN.—Your Honor, the folder with the enclosure which has been identified by the witness is offered in evidence as Plaintiff's Exhibit 3.

The COURT.—Admitted. [66—19]

(Folder referred to received in evidence and marked Plaintiff's Exhibit 3.)

Mr. ALLEN.—Mr. Spear, I call your attention to another exhibit here which I will ask you to identify, if you are able to do so.

The COURT.—This will be number "4"?

Mr. ALLEN.—"4" for inspection at least at this time.

A. I identify this as being the usual folder in which was kept the General Storekeeper's office copy of requisitions.

Q. That is the folder and where is the office copy?

A. It is pasted inside, as you see it here (showing).

Q. Do you identify that as being the ordinary and regular form of office copy?

Mr. SCHLESINGER.—Your Honor please, we object to the introduction in evidence or the examination as to any office copy.

Mr. SCHLESINGER.—We don't want to be bound by any office copies emanating from Mr. Kettlewell, or any copies furnished any office he had access to. If you have the original of that document

(Testimony of Ray Spear.)

perhaps we may consent to its going into evidence.

Mr. ALLEN.—Is this the original copy kept in your office?

A. Well, this is the original office copy, but the original of that requisition, of course, is on file in the Treasury Department.

Mr. SCHLESINGER.—Then we renew our objection. The original ought to be produced.

Mr. ALLEN.—We want to offer this with the explanation that Mr. House will explain the history of this instrument later.

The COURT.—Let it be offered later when Mr. House has testified.

Mr. ALLEN.—But I offer it for identification.

(Folder referred to marked Plaintiff's Exhibit 4 for identification.)

Mr. RIDDELL.—What is number "4," navy folder what? [67—20]

The COURT.—Office copy of requisition.

Mr. RIDDELL.—What requisition?

Mr. ALLEN.—That is kept in the Navy Yard at Bremerton?

A. It is part of the General Storekeeper's record.

Mr. MORRIS.—Will you kindly give me the number of that folder? A. I can't unless I see it.

Mr. RIDDELL.—No. 438.

A. That is not the folder number on the back. You are mistaken about that. That is the number of the requisition which that folder contains.

Mr. ALLEN.—The folder was the one in your office? A. Yes, sir.

(Testimony of Ray Spear.)

Mr. MORRIS.—I am trying to get some record.

Mr. ALLEN.—I call your attention, Mr. Spear,—

Mr. MORRIS.—Wait a minute, will you, Mr. Allen? May I ask the witness a question?

The COURT.—Yes.

Mr. MORRIS.—This is requisition number 438, Naval Supply Fund.

A. It seems I didn't have a chance to see what it was.

Mr. MORRIS.—That is what I want you to give us as those folders are handed to you. If you will, kindly give us the number of those folders and what they are.

A. You mean by the number of the folder the requisition number that it contains?

Mr. MORRIS.—Yes, that is what I want, and that would direct us to this folder, would it not?

A. Yes.

Mr. SCHLESINGER.—Is that the requisition number he gave?

Mr. MORRIS.—That will enlighten the Court and the Court can take the numbers. [68—21]

Mr. SCHLESINGER.—That was requisition number 438?

Mr. MORRIS.—Yes.

A. That is, folder contains requisition number 438.

Mr. SCHLESINGER.—Well, now, we have no objection to this being introduced in evidence. This bears the approval of the Navy Department, Washington, on April 8th, 1908.

The COURT.—What do you call that?

(Testimony of Ray Spear.)

Mr. ALLEN.—This, your Honor, is several instruments, and, as counsel stated, there is no objection to this.

Mr. MORRIS.—What is it?

Mr. ALLEN.—I am going to state it. The first instrument, the folder on the back, is a certificate of Mr. A. P. Andrews, Assistant Secretary of the Navy, bearing the seal of the Navy Department, bearing date of July 14, 1911, and including several originals to which they certify as being photographic copies of the original instruments on file in that department. The first instrument in the enclosure is a check, the same being number 82, bearing date of May 26, 1908, and made payable to the Fowler Metal Company for \$7,417.09, signed by Robert H. Orr, Paymaster, U. S. A. Endorsements on the back, “Pay to the order of E. Silverstone, Fowler Metal Company, by E. S. Fowler, President, and—(pause).

Mr. SCHLESINGER.—Secretary and treasurer, Mr. Goldberg’s initials at the bottom of it.

Mr. ALLEN.—E. S. Fowler, with some hieroglyphics, president and secretary, and the signature of E. Silverstone. Cut in the check is the word “Paid 6/2/08.” Endorsement is, “Received payment, Seattle Clearing House Association, on June 2d, 1908, First National Bank.” This has already been marked, and I now offer it in evidence. [69—22]

The COURT.—Exhibit number “5”?

Mr. ALLEN.—Number “5,” yes, sir.

The COURT.—I understand there is no objection?

(Testimony of Ray Spear.)

Mr. SCHLESINGER.—No, sir.

(Papers referred to received in evidence and marked Plaintiff's Exhibit 5.)

Mr. SCHLESINGER.—There is no folder for that, Mr. Allen?

Mr. ALLEN.—No, sir.

Q. I call your attention, Mr. Spear, to the third instrument in this folder, which purports to be a requisition for service of supplies on shore.

The COURT.—Third instrument in exhibit "5"?

Mr. ALLEN.—Yes, sir. State to the jury what that is?

A. This paper which I hold is a photographic copy of the original of requisition number 438, dated April 1st, 1908, Naval Supply fund, for stock; calls for one item 50,000 pounds of rolled sheet boiler plate $\frac{1}{2}$ by 6 by 12.

Q. Do you identify this signature here (showing)?

A. I identify it as being my signature as General Storekeeper.

Q. Can you trace from that instrument its history?

A. Yes, sir, I could.

Q. State to the jury just what happened to that particular requisition, that is to say, from the endorsement or anything you find on it?

A. This requisition, and the handwriting that appears on the face of it, I take it was prepared by Mr. Meyer, bears his handwriting, which I am familiar with.

Q. Can you identify that as the handwriting of the defendant Meyer?

(Testimony of Ray Spear.)

A. Yes, sir, I identify it. It was apparently prepared either [70—23] personally by him or under his direction, and later this endorsement was written on there by Mr. Meyer and sent to my desk for signature. As you understand it, this is the only—the first copy, the first copy only of requisitions bear signatures; the others are merely blue copies used for the information of the different people that it passes through. I can't tell what was done from this particular data here for the reason I don't know the estimated cost.

Q. Was this copy, the original which you hold in your hand, was that sent to Washington or was it sent to Seattle, or was it sent to Honolulu, or what happened to it?

A. This was sent back to Washington, D. C., to the Bureau of Supplies and Accounts.

Q. Sent from where?

Mr. SCHLESINGER.—What are you referring to now?

A. The same instrument we were speaking of.

Mr. ALLEN.—Instrument No. 3?

Mr. SCHLESINGER.—I know, but there are several instruments attached to No. 3.

Mr. ALLEN.—No, sir, this is exhibit number “5” and instrument No. 3.

A. As I stated, it was sent from the General Storekeeper's Office, Navy Yard, Bremerton, Washington, to Navy Department, Washington, D. C., Bureau of Supplies and Accounts, for approval. It bears the approval of the acting chief of the Bureau, J. S. Car-

(Testimony of Ray Spear.)

penter, United States Navy.

Q. You do identify this handwriting, beginning at the word "Required" down to the word "Washington" as being the handwriting of Mr. Meyer, do you?

A. Yes, sir. [71—24]

Q. With your Honor's permission, I will read this requisition to the jury (reading same). I call your attention to instrument 4 in exhibit "5" and ask you if you can identify your signature on that instrument?

A. Yes, I identify that as being my signature.

Q. That is what you call a pay bill?

A. That is what we call a public bill, which is the final act of the transaction, paying the bill.

Q. And that calls for 59,575 pounds of zinc?

A. Calls for 59,575 pounds of zinc, rolled sheet boiler plates, that had been purchased on requisition 438, which I previously identified.

Q. In other words, this is the pay bill for this folder which we offered in evidence, and is also the pay bill for this original requisition which you have just identified and which I have just read?

A. Yes, sir.

Mr. SCHLESINGER.—Mr. Allen, do you personally consider that all of the statements in that requisition are correct?

Mr. ALLEN.—It is a photographic copy.

Mr. SCHLESINGER.—It calls for 50,000 pounds of metal at the sum of \$625.

Mr. ALLEN.—That will be explained to you in a minute.

(Testimony of Ray Spear.)

Identify this as number "6," if you will, please.

(Paper referred to marked Plaintiff's Exhibit 6 for identification.)

Mr. ALLEN.—Have you any objection to the offer of this instrument in evidence (exhibiting papers to counsel for defendants) ?

Mr. SCHLESINGER.—I don't believe we have.

(Papers referred to received in evidence and marked Plaintiff's Exhibit 6.) [72—25]

The COURT.—What is it ?

Mr. ALLEN.—This first page, your Honor, is the certificate of the Navy Department signed by Mr. Joseph Daniels personally, apparently so at least, bearing the seal of the Government.

The COURT.—Very well.

Mr. ALLEN.—I will ask you to identify that document and tell the jury what it is.

A. This is the third memorandum copy of that same requisition number 438, April 1st, 1908, calling for the same quantity, 50,000 pounds of zinc, rolled sheet boiler plates. This is the copy that has been detached by the Bureau of Supplies and Accounts in Washington when that requisition passed through their hands.

Q. What is the history, Mr. Spear, of that particular instrument, beginning at the time it originated in your office; where did it go to ?

Mr. KERR.—You ask him for the history of it after it left his office ?

Mr. ALLEN.—Well, beginning at his office, yes, sir, what was done with it from your office ?

(Testimony of Ray Spear.)

Mr. KERR.—Not after it left his office.

Mr. ALLEN.—Did that originate in your office, Mr. Spear?

A. I have every reason to believe it is the copy of that.

Q. Well, assuming, because it is now admitted by counsel, it is a photographic copy and originated in your office, where did it go from your office?

The COURT.—What was done with it to your knowledge?

A. Sent to the Bureau of Supplies and Accounts, Navy Department, Washington, D. C.

Mr. ALLEN.—Sent directly to the Bureau of Supplies and Accounts at Washington, D. C., is that right? [73—26] A. Yes, sir.

Q. That never passed through the city of Seattle on its regular journey to Washington, I mean in an official way?

A. No, sir, this particular copy didn't.

Q. I call your attention now, Mr. Spear—first, let me ask you this question:—

Mr. MORRIS.—That particular copy, you say, did not pass from the navy yard to the Paymaster's office in Seattle? A. Yes, sir.

Mr. MORRIS.—What do you mean by that; you mean that the Paymaster's office was not notified that a requisition had been sent to Washington?

A. No, I didn't mean that at all. I said this particular copy. I didn't say anything about four or five other copies.

Mr. MORRIS.—Well, there were other copies made

(Testimony of Ray Spear.)

that were sent to the Paymaster's office here at the time that started to Washington, wasn't there?

A. It was the customary thing to do.

Mr. ALLEN.—Mr. Spear, how many copies of a requisition are prepared in your office?

A. I believe it was customary to prepare six, that is, the original, the white copy and five blue copies.

Q. Now state to the jury what became of those six different instruments?

A. At that particular time it was customary, when a requisition was prepared in which we had requested purchase through the Seattle Pay Office, to send an advance copy over to Seattle in order that they might get out their bids in advance—we would send this extra copy of the requisition over to the Seattle Pay Office in order that they might have advance information as to what the navy yard was [74—27] going to require, and in order that they might get bids ahead of time; that is, we assume when we were in a hurry for material, authority would be obtained in due course, although we couldn't obtain any contracts until the formal approval had been obtained, so one copy went to the Pay Office, one copy was retained in the General Storekeeper's Office, and the original and three copies were then sent to Washington, D. C. The bureau concerned, that is, the bureau that would have use for the material, kept one copy, and the Bureau of Supplies and Accounts kept its copy and the original was sent to the Seattle Pay Office by the bureau bearing the formal approval of the Navy De-

(Testimony of Ray Spear.)

partment for the purchase, and that was the authority for the Seattle Pay Office to go ahead and enter into a formal contract. Do I make myself clear?

Mr. ALLEN.—That is clear to me, I think, Mr. Spear. This was the copy which you identified a moment ago that came back to the Seattle office; is that right? A. Yes, and public bill.

The COURT.—That is exhibit “5,” is it?

Mr. ALLEN.—“5,” yes, sir. That is the one that came back to the Seattle office.

A. I identified this as being the copy that came back to the Pay Office.

Q. Mr. Spear, from any of the records I have shown you, or elsewhere, can you state as to whether or not bids were asked for this particular transaction?

Mr. SCHLESINGER.—We object to that on the ground the records themselves are the best evidence.

The COURT.—If this witness knows he can tell.

Mr. ALLEN.—Do you know, Mr. Spear, from these records, were bids asked for? [75—28]

Mr. SCHLESINGER.—Now, of your own knowledge, independent of the contents of the file.

A. That didn't come under my department.

Mr. ALLEN.—Mr. Spear, from the examination of that instrument which you hold in your hand, as well as these other instruments which have been shown you, can you tell this jury at this time as to whether or not bids were called for in this particular transaction?

A. I cannot answer that question.

(Testimony of Ray Spear.)

Q. Can you tell whether or not this material was advertised for following the custom of the navy?

Mr. SCHLESINGER.—Object to that on the ground it is calling for his opinion.

The COURT.—He may answer if he knows.

Mr. MORRIS.—The witness has answered he doesn't know.

Mr. SCHLESINGER.—Also on the ground the records themselves are the best evidence. Note an exception.

A. The record here would show the material was not advertised for, because it bears the approval of the Secretary of the Navy, or Navy Department, authorizing it be purchased without advertising.

Mr. SCHLESINGER.—We move to strike out the answer as being argumentative and no wise responsive, and not binding on any of these defendants.

The COURT.—The motion is denied.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Now, explain to the jury, Mr. Spear, what procedure was followed in this instance and how it varied from the usual and customary procedure.

Mr. SCHLESINGER.—We object to that upon the ground the rules and regulations of the department are the best evidence. This calls [76—29] for an opinion of the witness as to what custom existed there, and as to what departure was made from that alleged custom. We are not bound by his understanding; we are bound perhaps by rules, of the *rules were* called to our attention.

(Testimony of Ray Spear.)

The COURT.—The witness may answer if he knows what was done.

Mr. SCHLESINGER.—Exception. Will your Honor kindly explain to the witness by that question is meant his own personal knowledge.

The COURT.—Why sure. He knows that.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

The COURT.—If he knows, yes.

Mr. SCHLESINGER.—May I put a question to the witness?

The COURT.—Let him answer this question if he knows. Let this witness answer this question.

Mr. MORRIS.—Well, we want to examine the witness, your Honor please, before he answers the question to show he is not qualified to answer.

The COURT.—Let this witness answer the question if he knows. Proceed.

Mr. MORRIS.—Exception.

A. The estimated cost on this requisition—

Mr. MORRIS.—We object to that, your Honor.

A. Well, as the disbursing officer of the Government, familiar with the laws and regulations, I know what was done here, but I wasn't a witness to this transaction.

Mr. ALLEN.—Well, now, your Honor, I think he has qualified himself to answer. If your Honor thinks so I would like to have him answer.

Mr. MORRIS.—We insist he has disqualified himself.

(Testimony of Ray Spear.)

The COURT.—Read the question. (Question repeated.) [77—30]

Mr. MORRIS.—I say the answer disqualifies the witness from any further examination on that subject connected with his answer a while ago that he didn't know anything about it personally.

Mr. ALLEN.—I call your attention to this instrument No. 5 which has been offered in evidence, the back part of "3" thereof, as to whether or not that includes the instructions and rules which govern the operation of your department, now offered in evidence in the case.

Mr. ALLEN.—Can you, from an inspection of these instruments, by the examination of the regular endorsements that appear upon their faces, upon the back, or any part of the instrument, state, from your knowledge, the governmental records and records of the Navy Department, whether or not bids were asked for, whether or not advertisement was made in the purchase of that particular commodity.

Mr. SCHLESINGER.—Now, if your Honor please, that question ought to be somewhat separated, but to that part of the question which calls for his statement based upon records of the department, to that part of the question we object upon the ground that the records speak for themselves, and we are not bound by his recollection of what the records at that time indicated or what they are to-day. We are entitled to an inspection of the record and not to his independent understanding or recollection.

The COURT.—No, I think that after the witness

(Testimony of Ray Spear.)

has explained to the Court and jury the endorsements and the stamps, and everything found there, then he would be entitled, as an expert in that line, to say what was done from those memorandums and the jury can then determine what it was. Exception.

Mr. ALLEN.—Answer the question.

A. The signature down at the bottom, down here (showing), is by [78—31] the acting chief of the bureau, Bureau of Supplies and Accounts, Navy Department, in Washington. The face of the requisition bears the receiving stamp of the United States Navy Pay Office, Seattle, Washington, “Received on April 16th.” You will see it was approved on April 9th, and received in Seattle on the 16th of April. It could only be sent to Seattle for one purpose, and that was to complete the transaction.

Mr. SCHLESINGER.—Now, we move, your Honor, please, to strike out that part of the witness’ answer on the ground it is his opinion and argumentative.

The COURT.—That part, it was sent there for one purpose. State what appears there—

A. (Continuing.) As I say, it was received in the Seattle Navy Pay Office on April 16th. The stamp down here at the bottom (showing) indicates it was the original of his requisition, and was then returned to the General Storekeeper’s Office at the Navy Yard, Bremerton, on April 27th, 1908.

Mr. ALLEN.—What is that instruction?

Mr. KERR.—I object to it. If there is any instruction there, it speaks for itself.

(Testimony of Ray Spear.)

The COURT.—Let him read it. Note an exception.

A. The instructions, the order to the Seattle Navy Pay Office, reads as follows:

A. The order to the Seattle Navy Pay Office reads as follows: “Navy Department, Supplies and Accounts, April 9, 1908. The Purchasing Pay Officer, Seattle, Washington, is hereby directed to procure the above mentioned articles or services within the time stated, or as soon thereafter as practicable, and, upon the receipt of the vouchers showing the satisfactory delivery of the articles or performance of the service, is hereby authorized [79—32] to pay for the same at the prices contracted for or agreed upon. Signed, J. F. Carpenter, Acting Chief of Bureau.”

Mr. ALLEN.—Now, from your experience as an officer in the United States Navy, and familiarity with these books and accounts, and knowing, as you have ascertained the history of this requisition, can you now state to the Court whether, as a matter of fact, advertisement was made for the sale of this article? If it does not appear material other witnesses will prove it.

Mr. KERR.—Well, get that material witness.

Mr. SCHLESINGER.—The rule says in certain cases the advertisement may be and indeed should be waived, and this may have been one of those cases.

The COURT.—This asks whether an advertisement was made. Is there an objection to the question?

(Testimony of Ray Spear.)

Mr. SCHLESINGER.—Yes, your Honor, on the ground it is not proper cross-examination, immaterial and not binding upon the defendants.

The COURT.—Overruled in view of the other testimony.

Mr. SCHLESINGER.—Exception.

The COURT.—Exception allowed.

A. That particular transaction was not advertised.

Mr. ALLEN.—Mr. Spear, you have identified some of these instruments—

A. I have number 6 in my hand here, if you wish it.

Mr. ALLEN.—Yes, that is the one I want.

Q. These instruments came to you from what source when you signed your signature to this one, to the requisition (exhibiting paper to witness)?

A. That would come from the Chief of the requisition section, Mr. Meyer.

Q. I call your attention to the amount which is entered in the [80—33] original memorandum copy No. 3.

The COURT.—What exhibit is that?

Mr. ALLEN.—This is offered in evidence as exhibit number “6,” and calls your attention to the amount, \$625. Mr. Spear, was that amount, \$6,250, or was it \$625, when you signed that requisition?

Mr. SCHLESINGER.—Well, now, your Honor, please, it seems to me this is calling for the opinion or understanding of the witness. If that paper shows marks of obliteration or erasure it certainly speaks for itself.

The COURT.—He may state whether he thinks

(Testimony of Ray Spear.)

it was there or was not there when he signed it.

Mr. SCHLESINGER.—I don't know how his understanding can help this situation any.

The COURT.—If he knows those figures were different, he can say so.

Mr. SCHLESINGER.—Note an exception.

A. Well, may I refer back to a document I have already identified?

Mr. ALLEN.—Yes, sir, any of them, Mr. Spear.

Q. Mr. Spear, do you have any recollection of signing a requisition in the month of April, or thereabouts, 1908, for 50,000 pounds of zinc which carried with it an estimated purchase price of \$6,250?

A. I have no recollection of it.

Mr. ALLEN.—Have you seen this paper (handing paper to attorneys for defendants)?

Mr. SCHLESINGER.—Mr. Allen, let me ask you a question, please. Do you claim that 50,000 has been anywise changed?

Mr. ALLEN.—Don't make any claims in regard to it. I want the witness to make that. In one instance it has been. [81—34]

The COURT.—Proceed.

Mr. ALLEN.—I call your attention, Mr. Spear—

The COURT.—What exhibit is that?

Mr. ALLEN.—This will be exhibit "7."

(Papers referred to marked Plaintiff's Exhibit "7" for identification.)

Mr. SCHLESINGER.—Mr. Allen, would you mind telling us which one of those documents you are about to show to the witness?

(Testimony of Ray Spear.)

Mr. ALLEN.—I am going to show him number “7” here in a moment.

Mr. KERR.—Number “7” consists of a lot of documents.

Mr. SCHLESINGER.—Number “7” in a folder?

Mr. ALLEN.—I particularly wanted him to identify the folder and the form of this particular copy of the requisition which is pasted thereon.

Mr. SCHLESINGER.—You are now showing him the paper pasted in the folder?

Mr. ALLEN.—I am now showing you the folder itself. Can you identify that, Mr. Spear, as being like or similar to, or the kind in use in your office in the month of April, 1908?

Mr. SCHLESINGER.—May I ask a question? What is the folder number, please?

A. It is requisition 438.

Mr. ALLEN.—The same number we have been talking about. Can you identify that?

A. That is not a part of the records of my office, but I do identify it as a form that I am familiar with in use in purchasing pay offices in cities.

Q. Well, calling your attention to the inside of that folder, and attached to it, can you identify there, from the form or the make-up, or the appearance, that particular copy of the requisition there? [82—35]

A. Well, referring back to the previous documents that I have already identified, this is the sixth copy of the requisition 438, the original and other copies of which I have already identified.

(Testimony of Ray Spear.)

Q. Requisition 438 is for 50,000 pounds of zinc.

A. Calling for the same material I have referred to before, 50,000 pounds of zinc, rolled sheet, $1\frac{1}{2}$ by 6 by 12.

Mr. MORRIS.—We can't hear a word you say. Give us the number of the folder you have in your hand, if it has a number. A. 438.

Mr. ALLEN.—That is the number of the requisition, Mr. Morris, 438.

A. Navy Pay Office 438, dated April 1st, 1908.

Q. So the folder, then, is of the form that would be used in the Navy Pay Office, possibly, at Seattle, but this requisition on the cover on the inside of the cover, is the form of the requisition which is in use in your office, is that right? A. Yes, sir.

Mr. ALLEN.—Have you any objection to this going in?

Mr. SCHLESINGER.—Mr. Spear, would you mind telling me the meaning of the figures 125 immediately opposite 6,250?

A. The figure .125 indicates the unit price estimated for that material.

Mr. SCHLESINGER.—That is, the figures .125 indicates the price of 50,000 pounds of zinc?

A. The unit price per pound.

Mr. SCHLESINGER.—50,000 pounds *per pound*?

A. Yes, sir.

Mr. SCHLESINGER.—Let me ask you this other question, Mr. Spear.

Mr. ALLEN.—This .125, to which reference has been made, was the [83—36] estimate, then, made

(Testimony of Ray Spear.)

by Mr. Meyer over in your office, is that right?

A. Yes, sir.

(Folder and contents referred to received in evidence and marked Plaintiff's Exhibit "7.")

Mr. ALLEN.—This would be stamped, your Honor, as Plaintiff's Exhibit "8," I believe. This is "Account E" at the top.

The COURT.—I understand that is admitted.

Mr. ALLEN.—That is admitted in evidence.

Mr. SCHLESINGER.—What number is that, please?

Mr. ALLEN.—This is the same requisition on 438, that is, it has reference to the same requisition.

(Folder and contents referred to received in evidence and marked Plaintiff's Exhibit "8.")

Mr. ALLEN.—Take a look at that, Mr. Spear, and tell the jury, loud enough for those men on that far end to hear, tell the jury just what that is.

A. This is the storehouse and the storeman's record of quantities on hand in his building; shows receipts and expenditures by quantities only.

Q. Is that the kind of stock slip you had in use in your office, or in your work over there, in the month of April, 1908? A. Yes, it is the same thing.

Q. Tell the jury from that how much zinc plate you had on hand on April 1st, 1908. That has been offered in evidence.

A. The last expenditure here was on the 18th of March, shows 52,404 pounds. There are no receipts or expenditures up to April 1st, so that is assumed to be the balance, 52,404.

(Testimony of Ray Spear.)

Mr. MORRIS.—What date was that?

Mr. ALLEN.—The last time they took zinc out of their stock he [84—37] said was March what, Mr. Spear?

A. I think was March 18th. Is it not given there? There fifty-two thousand and some odd pounds on hand.

Q. Yes, March 18th, then, they had 52,404 pounds.

A. There was no receipts or expenditures between that date and the first of April.

Q. I will ask you to examine the condition of that stock as of date April 2d, 1908?

A. On April 2d it shows that we received 2,066 pounds.

Q. And how much zinc did you have on hand April 2d? A. 54,347 pounds.

Q. What was the size of the zinc to which I have been referring? A. $1\frac{1}{2}$ by 6 inches by 12 inches.

Q. Was that the same size zinc which was covered in this requisition 438 which I have been showing you? A. Yes, sir.

Q. Mr. Spear, some inquiry was made of you on Saturday afternoon with reference to a certain book, generally called Rules and Regulations of the Navy, and you stated at that time, as I recall, that the "Bible," as you term it, of 1905 was in force in 1908, is that true? A. Yes, sir.

Q. I offer for your inspection and identification a volume which you will identify for the Court and jury.

A. This is the regulations for the Government of

(Testimony of Ray Spear.)

the United States Navy written out in the year 1905. It was not superseded until 1909.

Q. Were the regulations as found therein in force in the year 1908, [85—38] in the months of January, February, March, April, May and June?

A. In the main, yes, sir; but, of course, during that interval many of the articles had been modified. These books are modified practically before we receive them.

Mr. SCHLESINGER.—Do you know in what respect that book has been modified, Mr. Spear?

A. I would have to audit the entire book.

Mr. ALLEN.—That is only modified by some letter that might be directed to you?

A. And general orders.

Mr. ALLEN.—We offer, your Honor, certain parts of this Blue Book, which are regulations directing officers of the United States Navy, including Mr. Spear.

Mr. SCHLESINGER.—We, your Honor please, shall have no objection to any particular rule being admitted in evidence if it be shown that rule was in existence during these alleged transactions.

The COURT.—Oh, yes, that must be shown.

Mr. ALLEN.—Calling your attention, Mr. Spear, to section 1309, I will ask you whether the rules there laid down were in force and effect during the year 1908, 1907 and 1908, with reference to the letting of bids for the purchase of supplies for the navy?

A. Yes, sir.

The COURT.—Now, let me ask, this exhibit, this

(Testimony of Ray Spear.)

book you have shown to the witness, was identified the other day as exhibit "1"?

Mr. SCHLESINGER.—No, your Honor, this is a new book.

Mr. ALLEN.—That was 1909 we had the other day, and the witness said 1905 was the ruling book.

The COURT.—Let this book be marked, then, as an exhibit so we will know what it is. That would be marked "9."

Mr. SCHLESINGER.—That is, for identification. Mr. Spear, [86—39] just a question. You are rather positive that particular rule has not been modified or changed?

A. I didn't say that. It might have been modified, but I said that the regulations in the main were in force.

Mr. SCHLESINGER.—And that particular section was in force during 1908? A. Yes.

Mr. SCHLESINGER.—From that statement, your Honor, we have no objection.

The COURT.—Very well. Now, let me ask, does that mean the entire book goes in or that section?

Mr. ALLEN.—Just that section.

The COURT.—That is section 1309 of exhibit "9."

Mr. ALLEN.—Yes.

The COURT.—It is admitted.

Mr. SCHLESINGER.—That is, as I understand, that particular section alone goes in?

Mr. ALLEN.—Yes, sir, and there is another to follow in just a moment.

(Testimony of Ray Spear.)

(Section 1309 referred to received in evidence and marked Plaintiff's Exhibit "9.")

Mr. ALLEN.—Section 1309, gentlemen, of the regulations for the government of the Navy of the United States, Volume 1905, which Mr. Spear has testified was in force and effect in 1908, reads as follows:

“There shall be three forms of purchase. That is,

A: By written contract under a formal written contract made after advertising for and receiving sealed proposals.

B: By open contract for service.

C: By open purchase, when the exigencies of the service require the immediate purchase or [87—40] delivery of articles not obtainable under existing contracts and they are procured in the open market.”

Q. Mr. Spear, I call your attention to section 1320 of the same volume,—

Mr. SCHLESINGER.—Mr. Allen, would you also mind identifying that by the page as well as by the section?

Mr. ALLEN.—The section which I have just read is found at page 285 of this volume. The section to which I am calling the witness' attention is found at page 287, section 1320, and ask you whether or not that section to which I am calling your attention was in full force and effect as a regulation of the United States Navy in the year 1907 and 1908?

A. Yes, sir, that has always been in force.

(Testimony of Ray Spear.)

Mr. SCHLESINGER.—(After examining same.)
To that particular section we have no objection.

The COURT.—Admitted.

(Section 1320 referred to received in evidence and marked Plaintiff's Exhibit "10.")

Mr. ALLEN.—On page 287 is admitted in evidence as follows: "Immediate purchase under open purchase requisition shall be ordered only when an exigency exists that will not permit the delay incident to advertisement and contract."

Q. Mr. Spear, are there any regulations contained in this Blue Book, or elsewhere, which further define, or more fully define, the duties of Principal Clerk as it existed in your office, or as the office existed with you, in 1908?

A. I know of no instructions that refers specifically to Principal Clerk.

Q. His duties, then, Mr. Spear, were such as you gave him to perform, is that right? [88—41]

A. Yes, sir.

Q. Calling your attention, Mr. Spear, to this volume which I will ask you to look at and identify for the Court and jury,—

The COURT.—That is another book?

Mr. ALLEN.—Yes, sir.

The COURT.—That may be identified, then, as exhibit number "10."

Mr. ALLEN.—State, Mr. Spear, what it is.

A. The book which I hold in my hand here is mainly for general storekeepers' force at navy yards and stations. It was compiled by an officer of our

(Testimony of Ray Spear.)

corps merely for the information of us and as approved by the Secretary of the Navy. The purpose of this book is merely to outline what is considered good practice.

Mr. ALLEN.—Does that have the binding force as regards general instructions upon the officers of the Navy the same as if it was issued by the Navy Department?

Mr. SCHLESINGER.—I submit that is calling for an opinion of the witness.

The COURT.—Let the witness state what was done under those instructions.

A. This had the force of an order for the reason it was approved by the Secretary of the Navy.

Mr. ALLEN.—Calling your attention to page—

Mr. KERR.—What exhibit is that?

The COURT.—Number “10.”

Mr. ALLEN.—Any objection now to these quotations?

Mr. SCHLESINGER.—Just let me see the particular one. (After examining same.) We have no objection to 10 and 15 being read into the record.

Mr. ALLEN.—It is then admitted into evidence, your Honor, these parts of—the page doesn't seem to be numbered. [89—42]

The WITNESS.—Isn't that numbered at the bottom?

Mr. ALLEN.—This section 10 of the volume just identified by Mr. Spear, then, your Honor, is read into the record as Plaintiff's Exhibit “10.”

The COURT.—Section 10.

(Testimony of Ray Spear.)

Mr. ALLEN.—Section 10 begins as follows: “The Chief Clerk of the Department, besides performing any special work assigned to him receives all incoming and forwards all outgoing papers of every description, and examines them before pointing them to their immediate destination. He places the time stamp on all papers received in the office by mail, messenger, or otherwise. He brings to the General Storekeeper’s attention any important matter without waiting for the papers pertaining to it to go through the usual routine.” I will omit the remainder, unless you want to put it in the record.

Mr. SCHLESINGER.—My understanding was, Mr. Allen, you had introduced in evidence all of that section. Am I right about it?

Mr. ALLEN.—I introduce that part of the section.

Mr. SCHLESINGER.—That was not your offer. I think the record will bear me out, all of it goes in.

Mr. ALLEN.—I have no objection to putting it in.

Mr. ALLEN.—I offer it only that far, your Honor.

Mr. SCHLESINGER.—Then, your Honor please, at this time we ask leave to read all of that section.

Mr. ALLEN.—They can read it, your Honor, in their case.

The COURT.—On cross-examination.

Mr. SCHLESINGER.—All right.

Mr. ALLEN.—The plaintiff offers in evidence section 15 of the same volume, mainly for the General Storekeeper’s force, identified by Mr. Spear and admitted in evidence by stipulation of counsel, [90—43] section 15, Plaintiff’s Exhibit number “11.”

(Testimony of Ray Spear.)

(Section 10 referred to received in evidence and marked Plaintiff's Exhibit "10.")

(Section 15 referred to received in evidence and marked Plaintiff's Exhibit "11.")

Mr. SCHLESINGER.—You propose to read all of that, Mr. Allen?

Mr. ALLEN.—Yes, sir, every bit of this. "The Requisition Clerk receives and forwards all open purchase and open contract requisitions prepared by yard departments. He receives all bureau requisitions, 'first' copies of requisitions returned from bureaus, and notices of contracts; and, after noting, sees that they are properly entered, copied (bureau requisitions), numbered or filed, as may be necessary. He prepares all open purchase requisitions for Naval Supply Fund stock, for purchase on account of contractors, and for fuel for officers, and open contract requisitions, for services of every character, not prepared by yard departments." Not necessary to offer the books in, I assume, your Honor?

The COURT.—Anything else in that book?

Mr. ALLEN.—No, I think not, your Honor.

The COURT.—Both are admitted.

Mr. ALLEN.—Your Honor will take judicial knowledge, of course, of the existence of this section, but for the information of the jury at this time I ask permission to read into the record part of the United States Revised Statutes found at page 390, it being a part of section 1581, for your Honor's information I will read it.

(Testimony of Ray Spear.)

Mr. SCHLESINGER.—I don't understand it is customary to read the law into the record. I have no objection, if you want to do it.

The COURT.—What is the section? [91—44]

Mr. ALLEN.—It is part of section 1581 of the Revised Statutes, Act of June 29, 1906, as amended by Act of February 26, 1907, and that part which is found on page 390 of the Revised Statutes, of the Supplement of 1909. "That hereafter the purchase of supplies and the procurement of services for all branches of the naval service may be made in open market in the manner common among business men, without formal contract or bond, when the aggregate of amount required does not exceed \$500, and when, in the opinion of the proper administrative officers, such limitation of amount is not designed to evade purchase under formal contract or bond and equally or more advantageous terms can thereby be secured."

Q. Was that section, and the other section which I have read into the record, were they in force and observed by the storekeepers of the Navy in the year 1908? A. Yes, sir.

The COURT.—He may answer whether they were observed or not. As to whether they were in force or not, that is a matter for the Court.

Mr. ALLEN.—Yes, sir, whether they were observed.

Mr. SCHLESINGER.—The Court will take judicial notice of the fact that such is the existing law.

Mr. ALLEN.—Then what was done in this case, and did you comply with the law and the rules and

(Testimony of Ray Spear.)

regulations controlling you in this particular transaction?

A. This particular transaction was in excess of \$500. And on that requisition bore the request that advertisement be waived. The only person who could approve that request was the Secretary of the Navy, and, therefore, that requisition was forwarded to the Department for action by that department.

Q. Calling your attention again to part of Plaintiff's Exhibit Number "5," now offered in evidence and part of the records in the [92—45] case, calling your attention to that part of the requisition which you testified the other day was the handwriting of Mr. Meyer, have you any recollection at this time as to whether or not that written memorandum was in there when you signed that requisition?

A. I have no recollection of it.

Q. One way or the other? A. No, sir.

Mr. MORRIS.—To what memorandum do you refer?

Mr. ALLEN.—That part of the written memorandum which reads as follows, that part which says, "required to fill requisitions from the Atlantic Battleship Squadron. Request waiving of advertisement and purchase through the Navy Pay Office, Seattle, Washington."

The COURT.—What exhibit is that?

Mr. ALLEN.—That is exhibit number "5," your Honor.

Q. Paymaster, when did the official information

(Testimony of Ray Spear.)

come to you, when did you know as to the time of the arrival of the fleet, of the Atlantic Battleship Fleet, in the city of Seattle, when did you get that information as to the definite time when it would arrive here?

Mr. SCHLESINGER.—We object to that as not being in anywise binding upon any of the defendants, and if the information is a matter of public record the record itself ought to be produced.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

A. Well, as early as January and February, thereabouts. I can't give you the definite date we knew the schedule.

Mr. SCHLESINGER.—What year, Mr. Spear?

A. 1908. We knew the schedule of the proposed arrivals and departures of the various fleets from the ports which they were to [93—46] visit.

Mr. SCHLESINGER.—We move to strike out the answer of the witness as not being responsive, and as being absolutely immaterial and not binding on the defendants.

The COURT.—Denied.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Did the fleet, as a matter of fact, adhere fairly well to that schedule which was laid out as early as January, 1908? A. Yes, sir.

Q. When did the fleet, the Atlantic Battleship Squadron, arrive in the city of Seattle, approximately what time?

A. If I remember correctly, it was May. I am not certain as to that date.

(Testimony of Ray Spear.)

Mr. ALLEN.—Take a look at the entire folder. Do you identify that as being a record from your office?

A. Well, this appears to be a yard record taken from the Commandant's correspondence files; it appears to be a record taken from the Commandant's office at the Navy Yard at Bremerton, his correspondence files.

Mr. ALLEN.—It may be marked, for the purpose of identification, as Plaintiff's Exhibit "11," I believe.

The COURT.—"11."

Mr. ALLEN.—"11" for identification. Calling your attention to that part of the exhibit—

Mr. KERR.—Mr. Allen, do I understand it is some record from the Commandant's office, is that right?

Mr. ALLEN.—Yes, a paper procured from the Commandant's office.

The COURT.—What is the objection?

Mr. SCHLESINGER.—The objection is it is an improper question, because he is now testifying from a document not in evidence. [94—47]

Q. Mr. Spear, from an examination of that instrument, if that does afford your recollection any help, can you testify positively as to the dates when these ships arrived, that is, the ships of the Atlantic Battleship Squadron, when they arrived in the harbor at Bremerton?

A. Well, my recollection is that the entire fleet arrived in the city of Seattle together, but they later split up and the various ships went to the yards.

(Testimony of Ray Spear.)

Q. Can you, from that memorandum, or otherwise, tell approximately when they arrived in Bremerton?

A. Yes, sir, it is listed here.

Mr. MORRIS.—What fleet is that?

Mr. ALLEN.—The Atlantic Battleship Squadron.

Q. What is the date, then, if that conforms to your recollection?

A. "U. S. S. Kentucky," arrived May 21st, 1908; the "U. S. S. Kearsarge" arrived May 27th; "Illinois" arrived May 27th; "Georgia" arrived June 1st; the "New Jersey" arrived June 1st; "Rhode Island," June 1st; "Virginia" on June 1st. That seems to be all of them.

Mr. ALLEN.—Do you know when the others arrived, Mr. Spear, as a matter of fact?

A. I do not, sir. It was sometime during May. The vessels split up later for the yard.

Q. Now, Mr. Spear, there is a letter in here we want to call the witness' attention to. I call your attention, Mr. Spear, to what purports to be a document enclosed in the same folder, and ask you, if you can, to identify that letter.

Mr. SCHLESINGER.—What are you showing him now, Mr. Allen?

Mr. ALLEN.—This is a letter purported to be signed by Ray Spear as Paymaster and dated April 22d, 1908, and bears file [95—48] number of 2288, offered for identification as plaintiff's exhibit—

The COURT.—Mark it for identification Plaintiff's Exhibit "12."

(Testimony of Ray Spear.)

(Paper referred to marked Plaintiff's Exhibit "12" for identification.)

A. I identify this letter as being a letter which I dictated myself.

Mr. ALLEN.—Is that your signature?

A. Yes, sir.

Q. That is the original, then, Mr. Spear, is it?

A. Yes, sir. It is a matter in which I took personal action.

The COURT.—That is admitted.

Mr. ALLEN.—I will take this out of the folder, because we don't offer the other in evidence.

(Paper referred to received in evidence as Plaintiff's Exhibit "12," same being read to the jury.)

Mr. ALLEN.—Mr. Spear, state to the jury whether or not on April 1st, 1908, whether there could have been in your office, or anywhere in the navy yard, or at least in your office, any memorandum of requisition from the Atlantic Battleship Squadron, except for possibly three battleships?

Mr. SCHLESINGER.—We object to that as calling for an opinion of the witness and not in anywise binding upon the defendants.

The COURT.—Overruled. He was the man who had charge of it.

Mr. SCHLESINGER.—Exception.

A. We could have only had at that time requisitions from the three ships mentioned there, I think the "Ohio," "Missouri," and one other.

Mr. ALLEN.—That is the time you refer to, April 22, 1908? [96—49]

(Testimony of Ray Spear.)

A. Yes, sir.

Q. Those three, as a matter of fact, Mr. Spear, may have come in after April 1st, 1908; is that true?

A. Yes, sir.

Q. Mr. Spear, I call your attention to a written memorandum—pardon me, I want to offer it to counsel first (handing same to counsel for defendants).

Mr. SCHLESINGER.—There is no objection, Mr. Allen.

Mr. ALLEN.—No objection to the introduction in evidence?

Mr. SCHLESINGER.—No, sir.

Mr. ALLEN.—By consent of counsel, your Honor, an instrument which I am now showing to Paymaster Spear, we offer as plaintiff's exhibit number—

The COURT.—Identified as exhibit "13."

Mr. ALLEN.—Calling your attention, Mr. Spear, to Plaintiff's Exhibit Number "13," I will ask you to identify that, if you can do so.

A. This paper which I hold in my hand is a copy of the original appointment of Mr. E. F. Meyer from the position of bookkeeper at the Navy Yard, Bremerton, Washington, to the position of Principal Clerk. The letter is signed by the Secretary of the Navy. This letter was obtained from the files of the Accounting Officer, Navy Yard, Bremerton.

Q. Calling you attention to the signature on the bottom, I will ask you if you recognize that signature.

A. I do, the signature of Edwin F. Meyer.

Q. The defendant in this case? A. Yes, sir.

(Paper referred to received in evidence and

(Testimony of Ray Spear.)

marked Plaintiff's Exhibit "13," same being read to the jury.) [97—50]

Q. Mr. Spear, did Mr. Meyer serve in that same capacity from the time of that memorandum, so far as you know, down continuously until away along in the latter part of the year 1908 as Principal Clerk?

A. Yes, sir.

Mr. ALLEN.—I offer for identification, and present it to the Clerk for marking for the purpose of identification, exhibit "15," which, for the information of counsel, is requisition number 169 of the series of 1908, and I don't see any other number here that is of any particular value to you, marked as Plaintiff's Exhibit "15" for identification.

(Papers referred to marked Plaintiff's Exhibit "15" for identification.)

The COURT.—Serial number what?

Mr. ALLEN.—Series No. 1908.

Q. Can you identify this folder, Mr. Spear, from your inspection?

Mr. SCHLESINGER.—Mr. Allen, would you mind telling me the character of that transaction?

Mr. ALLEN.—That is a zinc transaction. These I am going to call attention to now are zinc purchases.

A. This is the folder containing my office copy of requisition No. 169, which is taken from the files of the General Storekeeper's office, apparently. It has a zinc item—

Mr. MORRIS.—I understand that is only offered for identification?

(Testimony of Ray Spear.)

Mr. ALLEN.—Yes, sir, but I want him to describe it so as to get it in the record.

Mr. MORRIS.—We object to it, your Honor, because I understand it is only—

The COURT.—The objection is overruled. We the just finding out if it should go in. [98—51]

Mr. MORRIS.—Exception.

A. It is requisition No. 169, dated November 19, 1907, and contains one item calling for 4,000 pounds of zinc plates for boilers 1½ inch by 6 by 12.

A. The unit price, the estimated cost or unit price is 12 cents a pound.

Mr. SCHLESINGER.—We object, your Honor, please, to any question relating to the unit cost or price unless it relates to this particular transaction.

Mr. ALLEN.—Well, it is relating to this transaction.

Q. Mr. Spear, state, from inspection of the folder and its contents, this award made in that particular transaction, and to whom made, and the price at which it was made.

Mr. SCHLESINGER.—Now, if your Honor please, we object to that upon the ground the folder is not in evidence and the witness has no right to testify concerning its contents. We haven't any objection to explaining every transaction legitimately involved here, but we don't want to go into matters entirely foreign to the issue, and that is involving perhaps thousands of transactions with this and other concerns in Seattle.

Mr. SCHLESINGER.—Mr. Allen, will you allow

(Testimony of Ray Spear.)

me to ask you a question?

Mr. ALLEN.—Yes.

Mr. SCHLESINGER.—Is it not a fact that if the Government, the heads of the Department, did not like the bid of Mr. Goldberg, representing this Western Smelting Company, they could have and would have rejected that bid; isn't that true?

Mr. ALLEN.—Mr. Schlesinger, in some cases they did.

Mr. SCHLESINGER.—What did Mr. Goldberg have to do with the awarding of the bid? Nothing at all. [99—52]

Mr. ALLEN.—We want, your Honor, the record to show these exhibits which are under Mr. Spear's care are really offered in evidence. The offer was made in all cases, and hereafter we expect to renew the offer when they are coupled up with the testimony of Mr. House, and possibly the Paymaster at the yard. We want the record to show we made the record to introduce all of them, so hereafter—

The COURT.—Oh, I admit that.

Mr. ALLEN.—You may take the witness, gentlemen.

On cross-examination, the witness testified as follows:

(By Mr. MORRIS.)

I am at the present time Paymaster in the United States Navy and am the Senior Assistant General Storekeeper at Norfolk, Virginia.

My title in the services is Paymaster.

(Testimony of Ray Spear.)

The Norfolk yard is the second largest yard in the United States, that is, next to New York. You could put the Navy Yard of Bremerton in one corner of it.

I was General Storekeeper of the Puget Sound Navy Yard from January, 1908, until I think the 22d of August, 1910.

When I arrived at the Puget Sound Navy Yard I found the defendant Edwin F. Meyer, as Principal Clerk and acting Chief Clerk; also chief of the requisition section.

In January, 1908, I had in addition to Mr. Meyer, several other clerks in the Storekeeper's Department of the navy yard.

I mentioned a number of those clerks in my direct examination. I didn't mention them all.

Mr. Meyer was also a requisition clerk and I think Mr. Meyer was handling the clothing and small stores and provisions at the [100—53] same time; he also was at the time when I arrived there, the correspondence clerk, and he was the official clerk for the officers' fuel.

In the early part of 1908, Mr. Barnes was not connected with the Storekeeper's Department of the Puget Sound Navy Yard.

Q. That is, April of 1908 is the April in which this requisition for zinc we are now trying originated?

A. I believe so.

Q. But Mr. A. W. Barnes was appointed clerk and assumed his duties in the fall following this April of 1908?

A. Yes, sir.

Q. Your office force in January, February, March

(Testimony of Ray Spear.)

and April, and during the summer of 1908, was very small, was it not?

A. Yes, sir, considering the volume of work turned out.

Q. And you had in store approximately 60,000 or more items, did you not?

A. Well, of course, that would be a good deal of a guess, but I know that the Navy Yard in Norfolk has approximately that quantity, that number of separate and distinct items, and I assume we probably had about the same.

Q. Yes, sir, about the same number.

A. I never have counted them.

Q. Now, previous to assuming your duties as storekeeper at the Puget Sound Navy Yard in January of 1908, you had been connected with the Mare Island Navy Yard, had you not? A. Yes, sir.

Q. You were connected with the Storekeeper's Department of the Mare Island Navy Yard?

A. Yes, sir.

Q. And you were at the Puget Sound Navy Yard, from January, 1908, [101—54] continuously for about two years, were you not? A. Yes, sir.

Q. That would extend your service to the latter part of the year 1910? A. Yes, sir.

Q. And during all of that time this defendant, Edwin F. Meyer, was one of your clerks?

A. Yes, sir.

Q. I understood you to state that in January or February of 1908 you were advised that the Atlantic Fleet was to arrive at the Puget Sound Navy Yard,

(Testimony of Ray Spear.)

is that correct? A. Some time thereabouts, yes.

Q. Sir?

A. Sometime thereabouts. Of course, we knew the battleship was coming around to the Pacific Coast as far back as November, when the trip was being planned.

Q. But what I understand by that, you knew that the Navy Department was anticipating sending the fleet, Atlantic fleet, to the Pacific Coast?

A. Well, as a matter of fact, that was why I was sent up from Mare Island.

Q. Yes, sir, I was coming to that, Mr. Spear, that was my object. You were sent from Mare Island to take charge of the Puget Sound Navy Yard on account of the fact that the Atlantic Fleet was to be sent to the Puget Sound Navy Yard to be supplied and outfitted for a cruise around the world?

A. Yes, sir.

Q. Now, Mr. Spear, at the time you arrived at the Puget Sound Navy Yard, in January, 1908, was the Pacific Fleet at the Puget Sound Navy Yard? [102—55]

A. I think there were a number of vessels of the Pacific Fleet. Whether the entire fleet was there or not, I don't know.

Q. Now, when we speak of the Pacific Fleet I wish you would explain to this jury just what you mean by the Pacific Fleet, and the number of vessels that was then connected with the Pacific Fleet, as nearly as you can. I don't expect you to remember definitely.

A. Well, the principal force of the Pacific Fleet at

(Testimony of Ray Spear.)

that time, as I recollect it, was the Army cruisers, the "Tennessee" and "Washington," then probably the largest cruisers we had at that time, if not now. And in addition to that we had the "Colorado," the "West Virginia," the "Maryland," the "South Dakota," the "Maryland" and "California," six vessels of a type in addition to those other two.

Q. "Pennsylvania"? A. "Pennsylvania."

Q. "Milwaukee"? A. Yes, I think so.

Q. "Tennessee"? A. Yes, sir.

Q. The "St. Louis"?

A. Yes, she was in the vicinity.

Q. "Colorado"? A. Yes.

Q. The "California"? A. Yes, I named those.

Q. The "Washington"? A. Yes.

Q. Is it not a fact that in January, February, March and April, that you were called upon, as store-keeper, to supply the Pacific Fleet? [103—56]

A. Yes, sir.

Q. And at that time is it not a fact that you were not in favor of furnishing supplies to said fleet?

A. Yes, sir.

Q. That is, the Pacific Fleet. And the reason that you did not wish to supply this Pacific Fleet with supplies was because you anticipated, within a short time, the arrival of the Atlantic Fleet?

A. Yes, sir, that was in the main the reason.

Q. Now, Mr. Spear, the Atlantic Fleet at that time was composed of how many vessels?

A. Sixteen ships, that is, four types of four ships each, and in addition to that, of course, they had the

(Testimony of Ray Spear.)

supply ships and colliers along with it.

Q. And eight at least of the Atlantic Fleet was expected by you to be outfitted and supplied at the Puget Sound Navy Yard? A. Yes, sir.

Q. And in addition to these eight battleships you say that there were other vessels that accompanied the Atlantic Fleet?

A. Well, we didn't get them up here; we had nothing to do with the colliers.

Q. You had nothing to do with the colliers. Now, at that time you anticipated furnishing the Atlantic Fleet with supplies for their cruise around the world?

A. Well, I wouldn't go so far as to say that. We were giving them whatever they asked for.

Q. You anticipated supplies for six months?

A. Something like that, yes, sir.

Q. Something like that, six months. Now, this Atlantic Fleet was composed of what is known as battleships? A. Yes, sir. [104—57]

Q. The Pacific Fleet was composed of what was known as cruisers? A. Yes, sir.

Q. The battleships were large vessels carrying numerous men and officers?

A. Yes. No greater number, however, than these large army cruisers carry.

Q. Now, is it not a fact that that battleship fleet carried from 500 to 900 men per ship?

A. Yes, sir.

Mr. MORRIS.—I would like to ask, if your Honor please, is the prosecution through with its direct examination of Mr. Spear?

(Testimony of Ray Spear.)

Mr. ALLEN.—We have reserved, as you well know, this question of this collateral, which will be taken up at a later time. There may be some other questions we want to examine Mr. Spear about which haven't occurred to us. I presume your Honor will permit us. It is the usual custom to do that.

Mr. MORRIS.—I anticipated that might arise. If that is so, we respectfully request we be allowed to withhold our cross-examination until the Government has introduced its evidence in chief.

By the COURT.—Very well, do just as you like with this witness.

By the COURT.—Proceed. The objection is overruled.

Exception allowed, as far as it pertains to the bronze, anything in relation to the bronze transaction.

Mr. SCHLESINGER.—Exception. I understand your Honor's ruling, does that extend to the matter of price?

By the COURT.—Upon the zinc, but on the bronze, there are the two prices, I understand a difference of 30c and 50c.

Mr. SCHLESINGER.—Yes, that is true with respect to that particular lot.

By the COURT.—As to that particular lot, why there they involve [105—58] prices.

(Jury recalled.)

Mr. ALLEN.—I will ask the witness a few more questions.

Q. Again calling your attention to Plaintiff's Ex-

(Testimony of Ray Spear.)

hibit Number "14," that is requisition number 649, which has to do with purchase of certain supplies for the United States Government. I will ask you to take a look at the enclosures, and you have heretofore, I understand, identified that folder as being part of the files of your office?

A. This was taken from the files of the General Storekeeper's office at the Navy Yard, Bremerton.

Mr. ALLEN.—We offer that, your Honor, in evidence.

Mr. SCHLESINGER.—Now, your Honor please, we formally object to the introduction of the folder and its contents in evidence upon the ground it is immaterial, incompetent and irrelevant, and is in no wise binding upon the defendant, and does not tend to prove any of the charges contained in the conspiracy, and does not tend to prove any crime, or even any irregularity, and is, therefore, totally inadmissible.

The COURT.—That folder contains memorandum with relation to the bronze?

Mr. ALLEN.—Yes, sir.

Mr. SCHLESINGER.—And we also wish to object to the introduction of that on the ground it is too remote in point of time.

Mr. VANDERVEER.—I object on behalf of Mr. Corder—

The COURT.—Just a minute. What is the time of the purchase?

Mr. ALLEN.—The actual requisition bears date of May 23d, 1908.

(Testimony of Ray Spear.)

The COURT.—Admitted. Overruled. It is admitted in evidence.

Mr. SCHLESINGER.—Exception.

Mr. VANDERVEER.—I was only going to repeat, it is entirely [106—59] irrelevant and immaterial as far as Mr. Corder is concerned.

The COURT.—Overruled.

Mr. VANDERVEER.—Do I understand, your Honor, that all of the contents of that folder have been admitted in evidence?

The COURT.—So far as it relates to the purchase of the bronze.

Mr. ALLEN.—They all relate to that, as a matter of fact.

Mr. VANDERVEER.—That is, all of the separate papers?

The COURT.—But not the other, not the zinc.

Mr. ALLEN.—No, sir, this is toban bronze.

Mr. VANDERVEER.—Note an exception.

Q. I call your attention to this requisition contained in the folder, and admitted in evidence, and call your attention more particularly, Mr. Spear, to the items with reference to toban bronze as set out there on the requisition. Can you take the items of toban bronze—

A. On this requisition number 649, dated May 23d, 1908, purchase for stock, were issued to the Atlantic Squadron. Item 12, 32—

Q. On this requisition number 649, dated May 23d, 1908, purchase for stock, for issue to the Atlantic Squadron, item 12 to 32, both numbers inclusive, call

(Testimony of Ray Spear.)

for certain sizes of toban bronze.

Q. You identified from 12 to 32?

A. Items 12 to 32, both inclusive.

Mr. ALLEN.—Item 12, gentlemen, is 20 pounds of one-quarter inch toban bronze, estimated price 40 cents a pound, \$8. 75 pounds of three-eighths inch toban bronze, 40 cents a pound estimated price, \$30. 200 pounds of one-half inch bronze, 40 cents a pound, \$80. 100 pounds of five-eighths inch toban bronze, 40 cents a pound, that is the estimated price, \$40. 250 pounds of three-quarter inch toban bronze, estimated price 40 cents, \$100. 50 pounds of [107—60] seven-eighths inch, estimated price 40 cents, \$20. 150 pounds one inch, estimated price 40 cents, \$60. 50 pounds one and one-quarter inch, estimated price 40 cents, \$20. 50 pounds, one and one-half inch, estimated price 40 cents, \$20. 100 pounds, 40 cents, \$40. 50 pounds, one and seven-eighths inch, 40 cents, \$20. 360 pounds, two-inch, 40 cents, \$140. 100 pounds, two and one-quarter inch, 40 cents, \$40. 200 pounds, two and one-half inch, 40 cents, \$80. 300 pounds, 3 inch, 40 cents, \$120. Item 27. 20 pounds, one and one-eighth inch, 40 cents, \$8. 50 pounds, three-quarter inch toban bronze, hexagon in shape, cross flaps, estimated cost 40 cents, \$20. 100 pounds, seven-eighths inch toban bronze, 40 cents, \$40. 50 pounds, one and one-eighths inch, 40 cents, \$20. 200 pounds, one and one-quarter inch, 40 cents, \$80. 50 pounds, one and one-sixteenth inch, 40 cents, \$20. All the above vest quality of manufacture, to be delivered on the wharf at the Navy Yard, Puget Sound,

(Testimony of Ray Spear.)

Washington, within five days after order.

Q. Now, from the inspection of these other instruments, can you ascertain just to whom the different items particularly mentioned, with reference to Great Western, what items were awarded to the Great Western Smelting & Refining Company?

Mr. SCHLESINGER.—Of course, if your Honor please, it is understood all these questions are under our general objection.

Q. Calling your attention to the award, Paymaster, in that matter, can you find there those items as comparing—those are all awards to the Great Western, are they?

A. This is the award to the Great Western Smelting & Refining Company. I will name the items, if you wish.

Mr. ALLEN.—I will read that to the jury, Mr. Spear, with your [108—61] permission. This is the award of June 10, 1908.

(Reading same to jury.)

Q. Can you find there the award as made at this time to other companies to which awards were made?

A. Yes, I find an award dated here June 10th to the Whiton Hardware of 110 First Avenue, Seattle, Washington.

Q. That is the same award, same purchase, this award was made the same time?

A. Yes, of other items.

Q. Other items on the same requisition?

A. Yes, sir.

(Testimony of Ray Spear.)

(Reading to the jury award to the Whiton Hardware Company.)

Q. Calling your attention, Paymaster, to the bill enclosed in that folder, which shows the number of pounds actually consigned by the Great Western Smelting & Refining Company?

A. I find a bill here covering the same inspection call, which you referred to previously.

Q. From which I have just been reading?

A. Calling for $1497\frac{1}{3}$ pounds at 50 cents a pound, total is \$748.63.

Mr. SCHLESINGER.—And the delivery was called for in three days?

Mr. ALLEN.—Yes.

Mr. SCHLESINGER.—As late as June the 28th.

(Reading bill of Great Western Smelting & Refining Company to jury.)

Mr. ALLEN.—What was the result of the inspection on this 1497 pounds of toban bronze that was delivered there by the Great Western people on this bid of seven hundred and some odd [109—62] dollars, what happened to that consignment when it reached there?

Mr. SCHLESINGER.—Now, we object to that as being a matter of public record and the document speaks for itself.

Mr. ALLEN.—Well, I wanted to find it. I will read it to the jury, if that is satisfactory.

The COURT.—That part of the same exhibit?

Mr. ALLEN.—Yes, your Honor. It is all the record of that same particular transaction.

(Testimony of Ray Spear.)

The COURT.—He may answer.

Mr. SCHLESINGER.—Exception.

A. Well, there is something very peculiar about this record here.

Q. What is there peculiar about it?

A. The first inspection of the first delivery of the Great Western Smelting & Refining Company on Call 3174 shows that the entire quantity was passed by the Board of Inspection, and later that this Call was cancelled. The record over here, which should show the rejection, does not make any reference, however to—

Mr. SCHLESINGER.—Your Honor, what the record should show or does not show, we move to strike out.

The COURT.—It is so stricken.

Q. Show what was accepted of that 1474 or 5 pounds of toban bronze, how much was accepted, from that record?

A. Well, as I say, the entire quantity—

Mr. SCHLESINGER.—Mr. Spear, may I ask you right here, this is a good time to interrupt you, does the record show that Mr. Meyer had that lot re-inspected and caused it to be rejected?

A. The record itself?

Mr. SCHLESINGER.—Yes, the record itself.

[110—63] A. I couldn't say as to that.

Mr. KERR.—Speak louder.

Mr. ALLEN.—He said he couldn't say.

Q. Find the result of this inspection, and how

(Testimony of Ray Spear.)

much of this toban bronze was accepted by the officials at Bremerton?

A. Well, on August 15, 1908, call number 510 passed 935 pounds, from the lead pencil totals, I haven't verified that total, but that would appear to be the amount that they accepted of that 1400-pound delivery.

Mr. ALLEN.—This is the inspection on this 1475-pound delivery, when they made an award of seven hundred and some odd pounds.

Q. Now, from a comparison of these figures, Mr. Spear, it shows, then, that the Great Western Smelting & Refining Company was awarded seven hundred and some odd pounds?

A. Fourteen hundred and some.

Q. No, they were awarded how many pounds?

A. 747 or 8.

Q. 747 or 8 pounds, and when the inspection was had on this 740-pound delivery they actually passed 935 pounds, is it, Mr. Schlesinger?

Mr. SCHLESINGER.—Whatever the figure shows.

Mr. ALLEN.—They actually accepted 935 pounds?

A. 935 pounds.

Q. Does the record show what was done with the toban bronze which was an excess delivery beyond that which the Government accepted; in other words, the difference between 1475 pounds and the 935 pounds which was accepted, 1497 pounds?

Mr. SCHLESINGER.—Well now, your Honor please, I cannot for the life of me see what difference

(Testimony of Ray Spear.)

it would make what the Government did with that bronze. [111—64]

The COURT.—The record shows that.

Mr. SCHLESINGER.—How is it binding upon us, whether the Government used the bronze or didn't use the bronze, what difference does it make, how can it bind us in any way. Mr. Goldberg, or rather his company, or employer, had no control over the use by the Government of that particular bronze. We didn't compel the Government to use the bronze, or destroy the bronze, to consume the bronze, discard the bronze.

The COURT.—Let him answer. Proceed.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—I will withdraw that question and put it in this form.

Mr. SCHLESINGER.—The question withdrawn?

Mr. ALLEN.—In that particular form, because I misquoted the figures, Mr. Schlesinger.

Q. Then from the award made to the Great Western of 935 pounds of their total delivery there of 1497 pounds and a quarter, explain what happened to the 562 pounds and a quarter, if you can, from the record.

Mr. SCHLESINGER.—Same objection, your Honor please.

The COURT.—Same ruling. Proceed.

Mr. SCHLESINGER.—Exception.

A. Will you let me see the papers in the case? I think you have them.

Q. Certainly (handing papers to witness).

(Testimony of Ray Spear.)

A. I believe there is a Call missing here that is referred to in that record.

Mr. ALLEN.—Then, Paymaster, if the Government purchased and accepted 935 pounds out of a real consignment of 1497 pounds and a quarter, leaving 562 pounds and a quarter, sent by the [112—65] Great Western people, what would become of that excess?

Mr. SCHLESINGER.—We object to that as not being binding upon the defendant.

The COURT.—Let him answer.

Mr. SCHLESINGER.—Exception.

A. That should show on the copy of the Inspection Call as having been rejected as an excess delivery.

Mr. SCHLESINGER.—Now, we move to strike out the answer.

The COURT.—Let it stand.

Mr. SCHLESINGER.—Exception.

The COURT.—Note an exception.

Mr. ALLEN.—But the Government accepted on this requisition 935 pounds; they never accepted the 500 on this record?

A. On this record they did not.

Mr. SCHLESINGER.—Let me see if I understand that. Do you claim the Government paid for the quantity rejected?

Mr. ALLEN.—I will explain to you now. You seem to want to know.

Mr. SCHLESINGER.—I think I am entitled to know.

(Testimony of Ray Spear.)

The COURT.—You can explain that in a word or two.

Mr. ALLEN.—Yes, your Honor. The Government accepted 935 pounds, and there is 1497 over there, so there is $562\frac{1}{4}$ pounds that belongs to the Great Western people. Now, we propose to show, your Honor, that a new requisition appears.

The COURT.—Proceed.

Mr. ALLEN.—I call your attention to this instrument and ask you if you can identify that?

Mr. SPIRK.—Has this been marked for identification?

Mr. ALLEN.—Not yet.

A. This is the folder of requisition number 207.
[113—66]

Q. Taken from the yard, in your office?

A. Files of the General Storekeeper's office at Bremerton.

Mr. ALLEN.—I offer that for identification.

(Papers referred to marked Plaintiff's Exhibit "16" for identification.)

Mr. ALLEN.—We now offer that in evidence, your Honor.

The COURT.—Which?

Mr. ALLEN.—It is requisition number 207, the same bearing date of August 14, 1908. That goes in the same files, Mr. Schlesinger.

(Papers referred to, marked Plaintiff's Exhibit "16" for identification, received in evidence and marked Plaintiff's Exhibit "16.")

Q. Calling your attention to this requisition, I ask

(Testimony of Ray Spear.)

you to take a look at the files contained in the folder.

A. I find an Inspection Call here number—

Q. Get first the requisition.

A. Oh, you want this number?

Q. Yes.

A. Pasted to this folder is the office copy of requisition 207, dated August 14, 1908, and calls for seven items of toban bronze.

Q. That includes an item in regard to the estimated cost. Who prepared the estimated cost of that item during that time in your office?

A. It was the duty of Mr. Meyer.

Q. Mr. Meyer, the defendant. This is requisition number—

Mr. VANDERVEER.—It is understood this is all under our objection.

The COURT.—Let the record so show.

(Paper referred to read to the jury.) [114—67]

Q. Mr. Spear, these figures, then, are all at fifty cents a pound, and the total pounds would be the aggregate of the figures given here at the left, is that right (showing)?

A. That would be the quantity, yes, sir, called for.

Q. That is, 72 $\frac{1}{4}$ pounds plus 133 $\frac{3}{4}$?

Mr. ALLEN.—I will ask you to compare the residue left on hand, 562 $\frac{1}{4}$, of the original requisition, which was just offered you a moment ago, the same being Plaintiff's Exhibit Number "15." I will ask you to compare the aggregate number of pounds in these two requisitions, the balance that is left on

(Testimony of Ray Spear.)

hand over there and this requisition as made at this time?

A. The total as called for in this requisition is apparently 562 $\frac{1}{4}$.

Q. That agrees, then, with the balance or excess delivery of the Great Western people in the other requisition number 15 which I have just shown you to the pound, does it not? A. I believe it does.

Q. Now, identify and compare, I will get you the other requisition, compare the different kinds of material described in the requisition which you have before you for this excess delivery—compare the items contained in the excess delivery, if you can do so, that which was not accepted, and the requisition number “16” for this excess delivery which you say is identical in amount, 562 pounds. Can you compare them?

A. I will have to do a little bookkeeping and make some subtractions.

The COURT.—Have you the figures now?

Mr. ALLEN.—I haven't got them, no, sir. Here is the original requisition (exhibiting same to witness).

A. I don't quite understand the question. [115—68]

Q. Compare for this jury, by ascertaining from those records, the articles which were left on the dock, or which were not accepted by the United States Government, and then compare with that the articles which were identified and described in the new requisition which was sent through on August

(Testimony of Ray Spear.)

14th. You just testified they are identical, the excess left over is identical in pounds with the new requisition. Now, explain to the jury exactly how they compare as regards the kind and quality of toban bronze, lengths, sizes and everything of that sort. This probably belongs in there, too (handing paper to witness). A. This is an awful job.

Mr. SCHLESINGER.—Your Honor probably understands it calls for time August 14, 1908. The alleged conspiracy terminated on the 31st day of May, 1908.

Mr. ALLEN.—About two months difference, or a month, or something.

A. Well, the first item on this requisition calls for 72 $\frac{1}{4}$ pounds of toban bronze, $\frac{5}{8}$ diameter. The previous requisition had called for 100 pounds of which the 78 pounds was accepted.

Q. The sizes are identical, are they?

A. The sizes are identical.

Q. Compare the sizes all the way down.

A. On this other—I am referring to this first item, now.

Q. Yes.

A. So that the new award to the Great Western Smelting called for approximately the difference between the two.

Q. The excess delivery, is that right?

A. Yes, sir, approximately 20 pounds.

Q. I see. Now, compare the next one.

A. On the one inch calls for—the new requisition called for 143 $\frac{3}{4}$ [116—69] pounds. Apparently

(Testimony of Ray Spear.)

that was not accepted at all on the first call, and it was recalled on the second delivery, on the second award.

Q. It was included in the second requisition?

A. In the second requisition.

Q. And then received.

A. Then received. The quantities are identical, 143¾ pounds.

Q. In other words, the new requisition, then, that came through in August for that item fitted exactly the item which was not accepted in the prior inspection?

Mr. SCHLESINGER.—He didn't say that.

Mr. ALLEN.—Well, he said it in effect.

The COURT.—It already has been testified.

A. The same circumstances exist in regard to the one and one-eighth inch size.

Mr. ALLEN.—You mean by that, Mr. Spear, that in the original inspection of the award, or the first award, the Government did not accept?

A. One and one-eighth inch.

Q. One and one-eighth inch stuff, 36 pounds in quantity?

A. There is no record here of that in the first inspection call.

Q. That is, of the pounds?

A. Of the pounds, yes, sir, and the size also.

Q. Was that rejected, Mr. Spear, in the first inspection, under the first requisition?

A. It apparently was not billed at that time, was not referred to.

(Testimony of Ray Spear.)

Q. But was delivered, was it, as a matter of fact, on the first award?

A. I don't see they were ever awarded one and one-eighth on that award, wasn't delivered apparently—there apparently was no award made on the first delivery for the size one and one-eighth inch. [117—70]

Mr. ALLEN.—In other words, that was not accepted, you mean by that?

A. It was not accepted and doesn't appear.

Q. Well, does that quantity and same character of material appear in the second requisition which followed along in August? A. Yes, sir, it is here.

Q. Is it identical in amount and quantity?

A. Well, it doesn't appear at all, sir, on this first—

A. It does not appear at all is my answer.

Mr. ALLEN.—That is, as to the quantity. Can you compare the next item, more hurriedly, if you can, Mr. Spear?

A. On the original award the item called for 200 pounds of one and one-quarter inch size. There was 215 pounds delivered.

Q. On which requisition, now?

A. On the first requisition. On the second requisition, in August, there appears an item for that same size, 44½ pounds of inch and a quarter.

Q. Can you figure out from those records as to whether or not that represents the residue or excess of that particular kind of pipe, or toban bronze, which was not accepted in the first instance?

A. It appears on the requisition—

(Testimony of Ray Spear.)

Mr. MORRIS.—We object, your Honor. That is not an answer to the question. He asked you if you could figure out from that.

The COURT.—He was answering from the requisition. Proceed.

Mr. MORRIS.—Exception.

A. No, I cannot reconcile those two quantities.

Mr. MORRIS.—What is the answer?

A. I cannot reconcile those two quantities.

[118—71]

Mr. ALLEN.—Well, how long, Mr. Spear, would it take you to figure those items out?

A. Quite a lot of data here.

Mr. ALLEN.—Mr. Spear, have you checked, at my request, the quantity and the size, and any dimensions which might be apparent by the requisitions you have before you, with reference to requisition number 649, and more particularly that part of excess delivery which was not accepted by the Government under that requisition, and comparing that excess in amount and quantity with the items called for in requisition number 207, the same being the new requisition? A. Yes, sir, I have.

Q. With what result?

A. I find that the excess quantities delivered under requisition 649 are the same quantities that now appear on this requisition of August 14.

Q. That is, 207?

A. 207, yes. And the quantities are identical with the excess deliveries on the previous requisition.

Mr. SCHLESINGER.—Mr. Spear, when you say

(Testimony of Ray Spear.)

August 14th, what year do you mean in every instance?

A. Of 1908, it is understood.

Mr. ALLEN.—I will not go into those items, your Honor, because it is a matter of cross-examination.

The COURT.—Very well.

Mr. ALLEN.—I think that on Saturday, in examining Mr. Spear, I was inadvertently stated as having taken an unfair position to the defendant and to counsel for defendant with reference to the repeating of the endorsements on the check No. 82, same being the sum of \$7,714.19, of date of May 26th, 1908, and counsel, [119—72] Mr. Schlesinger, suggested the endorsement there was his initials. I am perfectly willing the record shall show the same time I read it, I intended to do so, it isn't clear—

Mr. SCHLESINGER.—We don't regard the matter of sufficient importance to make any admission one way or the other. Your Honor please, at some stage of this case we should like to be heard on the admissibility of his check in evidence. We think probably the question will properly arise when the question is asked with respect to the time of delivery, and I don't want to discuss it now because it would take too much time.

Mr. ALLEN.—Pardon me; I wanted to clear the record at this time while this witness was on the stand, so I am making the offer now, your Honor, if they wish to do so they may add that explanation of Mr. Goldberg as made at that time, those are his initials attached to the word "Fowler." I can't

(Testimony of Ray Spear.)

make it out that way.

Mr. SCHLESINGER.—That was inadvertently used, the signature.

Mr. ALLEN.—Very well, I think that is all.

The COURT.—Do I understand this is offered now?

Mr. ALLEN.—No, your Honor, that has been offered in evidence and admitted. That is an old exhibit. That is all, your Honor.

Q. Mr. Spear, at the noon recess I think I was asking you, about the last question was the supply of the battleship fleet for six months, and you answered about six months' supply, that is right?

A. I think so, yes, sir.

Q. Now, it is a fact that the outfitting of a battleship for a cruise around the world was an unusual thing, was it not?

A. Very unusual; yes, sir. [120—73]

Q. And to successfully accomplish that undertaking to the satisfaction of the Department, with the force that you then had at your command, was remarkable, was it not?

A. Well, everybody worked pretty hard. I don't know whether you consider it remarkable.

Q. An extraordinary condition existed at the Puget Sound Navy Yard from the time you arrived there in January, 1908, until after the departure of the fleets, an extraordinary condition?

A. For that yard, yes, considering the facilities that they had at that yard.

Q. That is what I mean. I am coming to the other

(Testimony of Ray Spear.)

questions later on, but just this now. Now, at the time the Pacific Fleet arrived at the navy yard, and you were directed to supply them, I understood you to say before the noon adjournment that you objected to making immediate supplies for the reason that you knew the Atlantic Battleship Fleet would be at the yard shortly thereafter?

A. Yes, sir, that is correct.

Q. That is true. Now, having knowledge that the Pacific Fleet and the Atlantic Battleship Fleet was to be outfitted at the navy yard, immediately after your arrival there you started in energetically for the purpose of accumulating stowage, stores I mean, that is right, is it not? A. Yes, sir.

Q. When a requisition was received from the Pacific Fleet it called for the material on very short delivery, did it not, as a general thing?

A. Well, a ship is always asking for material as soon as she can get it.

Q. As soon as they can get it. It is a fact that when either a [121—74] battleship or a cruiser wants supplies or provisions, and I make that in its broadest sense, why, they want them delivered in very short order?

A. Yes, that is the general rule.

Q. That is the general rule. Now, during the time that the Pacific Fleet was there at the yard and the battleship fleet, with your small force you were continually in a rush to get supplies of every nature and description that was demanded?

A. We were pretty busy.

(Testimony of Ray Spear.)

Q. In your former trial you used the expression that you were in a rush.

Mr. ALLEN.—Just a moment, your Honor. He says in your former trial.

Mr. MORRIS.—Excuse me, Mr. Spear. I meant to say your evidence on the former trial you used the expression “rush.”

A. Well, we were very busy. You can use the word “rushed.”

Q. And that condition of affairs existed during all of the time that the Pacific Fleet and the Battleship Fleet were at the yard? A. Yes, sir.

Q. Now, you had both of these fleets at the yard at the same time, that is correct, is it not?

A. Well, not the entire fleet. Our share of the fleet was at the yard.

Q. I am directing your attention to the fleet you had there, that is what I mean. I understood you only had one division of the battleship fleet, and my questions are all limited to those you had at the navy yard, but those two fleets that had been assigned to the navy yard were there, and the battleship fleet sailed from the Puget Sound Navy Yard on or about June the 15th? [122—75]

A. My impression is it was somewhere about that time. I think they went away in scattering numbers.

Q. And leaving still at the navy yard the Pacific Fleet? A. Or a part of the Pacific Fleet.

Q. Yes, sir, a part of it. Then you had the battleship fleet and the Pacific Fleet, some of those vessels,

(Testimony of Ray Spear.)

at the Puget Sound Navy Yard from January or February, 1908, to June, 1908? A. Yes, sir.

Q. You fully and completely met every demand for supplies for each of said fleets, did you not?

A. Well, I heard no complaints.

Q. Sir?

A. I heard no complaints from the ships.

Q. Well, you can answer that question yes. It is a fact, is it not?

A. I think so. I haven't heard everybody express their opinion on it.

Q. Well, it is a fact, is it not, that your work was accomplished to the satisfaction of the Navy Department of the United States, to the satisfaction of the commanders of the respective fleets, or the admirals of the respective fleets, and the commanders of each and every ship? A. Yes, sir, I believe so.

Q. And after those ships had sailed from the Puget Sound Navy Yard you received from the Secretary of the Navy, or some high official in the navy, a letter of commendation commending you and your small force for the most remarkable work that they had done in outfitting those fleets?

A. We did get some such letter, yes, sir.

Q. Now, at that time this defendant, Edwin F. Meyer, was your [123—76] requisition clerk?

A. Yes, sir.

Q. Working from early morning until late at night, was he not? A. Yes, sir.

Q. And he was one of the most faithful, most trustworthy, and most valuable clerk that you had in your

(Testimony of Ray Spear.)

employ, was he not?

A. Yes, I always considered Mr. Meyer to be one of my best men.

Q. And it is a fact, is it not, without the services which this defendant rendered you at said time in assisting in outfitting that fleet you could not have done it?

A. Well, I wouldn't go so far as to say that, you know. People come and go in the United States Navy and they go along some way.

Q. Well, I will use this expression. In the former trial of this case you used, in answer to that question, you said that without him you would not have gotten along?

A. Well, that was possibly an exaggeration.

Q. But his services were inestimable to you at that time?

A. His services were of extreme value to us.

Q. Previous to your arrival at the Puget Sound Navy Yard you had been connected with the Navy Yard at Mare Island? A. Yes, sir.

Q. And, as you have testified before, you had been transferred up here on account of conditions that the Navy Department expected to exist, and immediately after you arrived at the Puget Sound Navy Yard from Mare Island you started in, for the purpose of putting the Puget Sound Navy Yard on an equal footing with Mare Island in regard to furnishing supplies for ships, did you not?

A. Yes, sir. [124—77]

Q. Then you adopted the usual procedure for se-

(Testimony of Ray Spear.)

curing such supplies? A. Yes, sir.

Q. Mr. Spear, is it not a fact that at the time you assumed charge as storekeeper the storehouse of the Puget Sound Navy Yard was small and the amount of supplies then on hand inadequate to supply the anticipated demands of the Pacific Battleship Fleet?

A. The Atlantic Battleship Fleet I testified. You said Pacific. I think you meant Atlantic.

Q. The Atlantic Battleship Fleet.

A. They were very inadequate at that time.

Q. Very inadequate.

Mr. ALLEN.—Your Honor, for the purpose of shortening this examination, I will concede that the Navy Yard at Bremerton at this time, during this period of months, was very, very busy, your Honor, that Mr. Meyer worked very hard, and Paymaster Spear was very, very busy. We will concede all of that, if that is the purpose of the examination.

Mr. MORRIS.—And at that time you immediately started in to make an accumulation of stores?

A. Yes, sir.

Q. At the time you started in to make this accumulation of stores this defendant, Edwin F. Meyer, was your requisition clerk? A. Yes, sir.

Q. You talked with the defendant Meyer relative to your intentions in respect to securing stores?

A. Naturally, yes, sir.

Q. Yes, sir, naturally you would. Do you remember the conversation that you had with Mr. Meyer relative to what he was to do in finding [125—78] out, or attempting to find out, the stores and supplies

(Testimony of Ray Spear.)

that would be needed?

A. I don't recall any specific conversation.

Q. You had a number of conversations with Mr. Meyer on that subject, did you not?

A. Oh, yes, it was practically daily.

Q. And each and every one of those conversations pertained to acquiring information as to the amount of stock then on hand, the demands that were liable to be made by the respective battleships and the Pacific Fleet, and so forth? A. Yes, sir.

Q. Now, a storekeeper in the Puget Sound Navy Yard, knowing that a fleet was to be outfitted, necessarily, in order that he might secure supplies needed, would anticipate the needs of the ship?

A. Yes, sir, he would have to.

Q. He would have to do that. And unless he did so anticipate he was liable to have the fleet on his hands and not having made sufficient provision for them? A. Yes, sir.

Q. And in a case of that kind he would be open to extreme censure? A. Yes, sir.

Q. For incompetency? A. Yes, sir.

Q. Now, I want to see if I can refresh your memory, Mr. Spear. Do you remember of instructing Mr. Meyer to take a ship allowance-book and make requisitions for the stock of such supplies as were constantly called for?

A. I think I do, yes, sir. I remember that we tried to use the [126—79] allowance-book as the basis of figuring possible needs.

Q. Now, explain to the jury what you mean by

(Testimony of Ray Spear.)

ship's allowance-book.

A. The ship is divided into several departments. There is the Equipment Department of the vessel, and the Construction and Repair Department, Steam Engineering Department and so forth, Navigator's Department. The Bureaus in Washington correspond with these departments on board the ship, did at that time, and each Bureau in the Navy Department gets out an allowance list of material. There are two classes of material, title "B" and title "Y." "B" are tools, articles that cannot be expended by use. Title "Y" articles are articles that are expended every day, coal-oil, waste, you are constantly using, and they are simply expendable by use. The allowance lists are those lists that are based on a six months' allowance; that is, the quantities indicated on title "Y" are for six months' allowance. In other words, an allowance list is merely an indication to the ship what the Department expects that department of the ship to get along with during a fixed period. They may not do it, but it is a matter for the Department to question.

Q. Mr. Spear, you had knowledge at least as early as January or February, 1908, that the Atlantic Battleship Fleet was to be at the Puget Sound Navy Yard for supplies? A. Yes, sir.

Q. And with that knowledge in mind you did start in to accumulate these supplies that were liable to be called for by the respective ships, and those were supplies with which you had your conversation with the defendant just repeated? A. Yes, sir.

(Testimony of Ray Spear.)

Q. Now, I want to direct your attention at this time to Plaintiff's Exhibit Number "12," which is a letter of date April 22d, 1908. [127—80] The requisition that is involved in this indictment, we will say, was prepared on the first of April, or twenty-two days previous to the date of this letter. On the first of April, 1908, you anticipated this battle-ship fleet to arrive at the Puget Sound Navy Yard?

A. Yes, sir.

Q. And for a number of days or weeks previous to the first of April, 1908, you had anticipated the arrival of said fleet? A. Yes, sir.

Q. You remember the contents of Plaintiff's Exhibit "12"? I will hand it to you and you can look at it. A. Yes, sir.

Q. Now, is it not a fact that previous to the date of writing the letter, April 22d, as shown by Plaintiff's Exhibit "12," that you had expected a condition of affairs to exist relative to the appearance of these certain ships?

A. Yes, sir, it was outlined in a general order.

Q. And, acting upon the belief that these particular ships were to arrive at the navy yard and be outfitted at the navy yard, you acted in accordance with that assumption in preparing your supplies?

A. Yes, sir.

Q. That is true. Now, something arose that caused you to address that letter to the Bureau at Washington?

A. Well, this is to the Commandant.

Q. To the Commandant. Now, you say to the

(Testimony of Ray Spear.)

Commandant, and to the Commandant where?

A. Navy Yard, Puget Sound.

Q. Navy Yard, Puget Sound. Now, will you kindly explain to this jury the reason why you addressed the communication as shown [128—81] by Plaintiff's Exhibit "12" to the Commandant of the Puget Sound Navy Yard?

A. Well, previous to writing this letter we had received information that the "Minnesota," "Ohio," "Missouri" and "Calgoa" would dock, and therefore take on their stores at the Navy Yard at Bremerton. About the time that I addressed this letter, or a day or two previous to this letter, as a matter of fact, it is given here April 15th, we received a telegram from the Bureau of Construction and Repair in Washington saying that the "Georgia" and "New Jersey," "Rhode Island" and "Virginia," would dock at Bremerton, and we had had no previous warning of the arrival of those particular ships, we didn't know we would have to have those ships up there or prepare for them.

Q. Now, right there just let me ask you a question while you are on that subject. You had up to that time, or up to the 22d of April, 1908, made provision for eight battleships, had you not?

A. Well, in a general way, we did.

Q. In a general way? A. Yes.

Q. Then you found out that there were four certain ships that were expected, or that you were expected to care for that were to be sent to the navy yard?

(Testimony of Ray Spear.)

A. Well, there were eight, as a matter of fact. We took eight ships.

Q. Yes, but these four ships you had made no provision for?

A. We had made no provision for the ships of the names there, the "Georgia," "Rhode Island," "Virginia,"—

Q. And if you were to furnish supplies for those ships you wanted to know the day particularly so you could go to work and accumulate your stores?
[129—82]

A. Oh, no, that didn't make any difference. We were to get eight ships. We didn't know what eight ships they were, but in the meantime these ships had begun sending in their requisitions to us. We didn't know what they wanted. What I was after here was to get these particular ships to send in their requests. We had already prepared for eight ships. We didn't care what ships.

Q. Now, as I understand, if these four ships, of which you had no information, were to come to the navy yard and were to be outfitted by you, you wanted to find out the needs?

A. I wanted them to put in their requests.

Q. You wanted them to put in their requests, to make their application by requisition?

A. Yes, sir.

Q. That was all to that. But, previous to that time you had been acting on the assumption, and had been accumulating stores for the purpose of supplying the eight ships of the Atlantic Fleet that you

(Testimony of Ray Spear.)

knew were to arrive? A. Yes, sir.

Q. Then it is a fact, Mr. Spear, that you were acting on the assumption that these battleships would arrive at the Puget Sound Navy Yard for supplies on or about the first of April, 1908?

A. I don't think quite as early as that. The first of May, I believe, or somewhere around in that neighborhood.

Q. I say, you anticipated that they would arrive?

A. I wasn't expecting them quite as early as that; I was expecting them along about the first of May.

Q. You misunderstand my question, then.

Mr. MORRIS.—I don't mean the date of the arrival of the ships, Mr. Spear, you misunderstand me. I mean that you were anticipating [130—83] the arrival of the battleships on or about the first of April, 1908? A. No, sir, I was not.

Q. What I mean to explain to you is this, on or about the first of April, 1908, you had information that these battleships would arrive at the navy yard during the summer? A. Yes, sir, we had that.

Q. You had that. And having that information on the first of April, you were preparing—oh, I see what you mean.

Q. (Continuing.) —to accumulate the stores?

A. Oh, I see what you mean. I understand now.

Q. That is true, is it not?

A. Yes, that is correct.

Q. And you had been so preparing for a number of weeks previous thereto? A. Yes, sir.

Q. Now, Mr. Spear, is it not a fact that it was

(Testimony of Ray Spear.)

necessary for this defendant, in the course of his assistance to you in securing supplies, to order paints, oils, paint brushes, and so forth?

A. He prepared requisitions for those things, yes.

Q. Yes, sir. And these requisitions to which you have referred were for paints, oils, brushes, and so forth, used by whom, the ships?

A. Oh, they might be used by the ships, by yard departments, yes.

Q. It is a matter of fact, is it not, that you were compelled to supply, and did supply, a great quantity of oils, paints and brushes to the battleship fleet?

A. Well, I think that statement is generally correct, yes.

Q. Yes, sir. Now, in addition were you required to supply tools? A. Yes, sir. [131—84]

Q. Of every description almost?

A. Yes, sir. That is, you might say there is practically no item in the commercial world that is not carried at one of these navy yards.

Q. Mr. Spear, it was also necessary for you to provide clothing of every nature and description for the men on these respective ships? A. Yes, sir.

Q. That clothing consisted from the outer garments to the socks? A. Yes, sir.

Q. Caps and hats, and so forth. And it is also a fact that you were required to anticipate the amount of provisions the respective ships would require?

A. Yes, sir.

Q. There were from 500 to 900 men aboard the re-

(Testimony of Ray Spear.)

spective ships, probably average 750 or 800?

A. Yes. I will explain that, I think, for the benefit of the jury, that provisions can be rather readily ascertained for the reason a certain number of men can consume only a certain amount of provisions, and that supplies it. There is a fixed allowance, you know, by Congress.

Mr. RIDDELL.—You say there is a fixed allowance by Congress?

A. Yes.

Mr. MORRIS.—And if you were going to provision one battleship, of course, you would supply them with, we will say, pounds of flour; if one battleship would require 60,000 pounds of flour, why, ten battleships would require 600,000 pounds of flour for a certain time?

A. Yes, provided—

Q. That is the way you estimate? [132—85]

A. Provided all ships were equally supplied to start with.

Q. And if those ships would require that much flour for one month, they were going on a cruise for six months, then you would make your estimate sufficiently large, according to the length of time they would be on their cruise? A. Yes, sir.

Q. Mr. Spear, when you arrived at the Puget Sound Navy Yard do you remember where the storekeeper's place of business was located?

A. Yes, sir, on the second floor of the building used as the principal storehouse.

Q. And after you had completed supplying the

(Testimony of Ray Spear.)

Pacific or the Atlantic Battleship Fleet, shortly thereafter you removed from the old quarters into more commodious quarters? A. Yes, sir.

Q. Do you remember just how long after the battleship fleet left here?

A. Why, I think it was sometime during the early fall of 1908.

Q. Early fall of 1908. Probably within three months after the Atlantic Battleship Fleet had sailed? A. Something like that.

Q. Now, one of the first moves that you made, after you got rid of this battleship fleet, was to start in with the preparation of an index system?

A. I believe something like that was started about then.

Q. When you arrived at the Puget Sound Navy Yard there was practically no index system in existence? A. The records were very incomplete.

Q. The records were incomplete, and it was with difficulty that a particular article could be found in a record because it had [133—86] not been indexed, that is true?

A. Yes, that was true to a large extent.

Q. And you realized that that system could not long exist, and therefore you started in, just as soon as you got these fleets off of your hands, to build up an index system? A. Yes, sir.

Q. And you also, shortly after your arrival at the Puget Sound Navy Yard, requested the Department to furnish you additional help?

A. We were always calling for that.

(Testimony of Ray Spear.)

Q. You were calling for that, and the reason that you called for additional help at that time was because your working force in the Puget Sound Navy Yard was not sufficient to take care of the business?

A. Yes, sir, that is correct.

Q. And after the battleship fleet had left the Puget Sound Navy Yard, and after they had been cared for by your small force, you, later on, secured additional help? A. Yes, sir.

Q. In the person of one Mr. A. W. Barnes, who came there in the fall of 1908?

A. Well, I appointed Mr. Barnes myself as Paymaster's clerk, that is his official title, and I had the right to make that appointment.

Q. You made that appointment. But you made the appointment because his services were needed?

A. We wanted the services of a high-grade man there.

Q. And the reason you wanted the services of a high-grade man was because it was necessary, on account of the conditions that existed, the lack of help? [134—87] A. Yes, sir.

Q. In other words, previous to that time this defendant, Mr. Meyer, had been carrying the burden of work that was later placed upon Mr. Barnes' shoulders? A. Yes, sir.

Q. Now, the storeroom that you occupied at the Puget Sound Navy Yard from January, February, March, April, May and June, was small and you were greatly cramped for room?

A. The storeroom that I occupied? Are you

(Testimony of Ray Spear.)

speaking of my office or the storehouse that I occupied?

Q. I mean where the records and things were kept.

A. The office?

Q. Yes, sir. A. Yes, that was very small.

Q. That was very small. And in that small room you had these folders that contained the respective requisitions and the record of each and every proceeding of like kind? A. Yes, sir.

Q. Simply in there in numerical order?

A. Yes, sir.

Q. Mr. Spear, are you familiar with the zinc, or the kind of zinc that is mentioned in the indictment in this case? A. Well, I know what it is used for.

Q. Boiler zinc?

A. Yes, sir, it is hung in boilers.

Q. Boiler zinc. Now, Mr. Spear, will you kindly tell the jury for what purpose boiler zinc was used at that time, the time of the date of this requisition?

A. Well, it is customary to hang slabs of zinc, and in this case they were put inside. They were cut in sizes 6 by 12 by $\frac{1}{2}$ inch. [135—88] They either hung those on wires inside the boilers, or placed them in baskets inside the boiler, to allow the salt water to attack that instead of attacking the metal of the boiler. It preserves the boiler, in other words. They will be eaten away by galvanic action if you don't have something of that sort in them.

Q. It is boiler zinc to which you referred, was it?

A. Yes, sir.

Q. The same kind of zinc that is mentioned in this

(Testimony of Ray Spear.)

indictment? A. Yes, sir, I believe so.

Q. Now, Mr. Spear, zinc of that kind was used by all battleships and all cruisers of the Navy, was it not? A. Yes, sir.

Q. It was a supply that the ships were compelled to have at all times? A. Yes, sir.

Q. Just as much of a necessity as flour or meat?

A. Yes, sir.

Q. Probably more so. Now, this zinc was used for what purpose on the ship, do you know, just in a general way? A. This what?

Q. The zinc for the boilers, and so forth?

A. I thought I explained that.

Q. I didn't hear you.

A. I told the jury it was hung inside of the boilers.

Q. That is right. Now, Mr. Spear, are you able to state about the average amount of zinc that would be needed to supply a battleship, say, for six months?

A. Well, every three or four thousand pounds on board each ship would be considered an ample stock for an individual ship to carry. [136—89]

Q. Let me ask you this question and maybe it will refresh your memory. You were familiar with the battleship "Nebraska"?

A. Yes, sir, I have seen her a great many times.

Q. The battleship "Nebraska" was lying in front of the Puget Sound Navy Yard during the winter or spring of 1907?

A. Well, I assume that. I wasn't there then, but I understand that.

Q. I mean 1908.

(Testimony of Ray Spear.)

A. Well, she left with the fleet, but she had been there during the spring of 1908.

Q. Now, as a matter of fact, the "Nebraska" came over to the Puget Sound Navy Yard and was furnished by you and your assistants supplies for her crew? A. Yes, sir.

Q. And at that time you were outfitting the battleship "Nebraska," knowing that she was to become a member of the Atlantic Fleet, and she did become a member of the Atlantic Fleet, and sail with them, that is true, is it not? A. Yes, sir.

Q. Now, directing your attention to Plaintiff's Exhibit "8," being a stock card, I believe, I will ask you if you can tell this jury from said stock card how many pounds of boiler zinc you furnished to the "Nebraska" at said time.

A. It shows here that the "Nebraska" was furnished on the 18th day of April, 8,000.

Q. 8,000 pounds?

A. Yes, sir. I would like to explain that issue, however. The reason for the probably larger quantity on account of that ship being a new ship, and her boilers—I have forgotten how many, eighteen or twenty boilers, would have to be completely outfitted [137—90] with these particular zincs, which would, after having done so, would leave her with a normal quantity of boiler zinc on hand for supply purposes. You understand, she—

Q. Now, Mr. Spear, again directing your attention to Plaintiff's Exhibit "8," I will ask you if you can tell from said exhibit whether or not you furnished

(Testimony of Ray Spear.)

to any other ship, battleship, any boiler zinc?

A. Oh, we furnished all the ships that came there to the yard, I guess.

Q. I know that, I am satisfied of that.

A. There is the "Washington" took 2,000 pounds, the "California" took 5,000, the "Colorado"—

Q. Now, the "California," directing your attention to the "California." The "California" at that time was an older ship, was she not?

A. She was, yes, she was quite old.

Q. She had been in the service a long time?

A. Two or three years, I think, at that time.

Q. And the "Nebraska" was a new ship just off of Moran's ways here probably and over at the navy yard, is that what you want to convey?

A. Yes, sir.

Q. That is the condition? A. Yes, sir.

Q. Now, do you find any other supply to battle-ships there?

A. The "Missouri" took 1500, I see an issue here of 80 pounds to the "Wisconsin." The "Wisconsin" then took 650 pounds on another requisition. The "Rhode Island" took 2,000 pounds. The "N. J.," I presume that stands for "New Jersey,"—

Mr. ALLEN.—Mention the date. [138—91]

A. (Continuing.) That is in May and June, 1908.

Mr. MORRIS.—You had no knowledge previous—are you through, Mr. Spear?

A. Yes, unless you want me to complete that.

The COURT.—How much?

A. I think it was two thousand and eighty pounds

(Testimony of Ray Spear.)

there, the "New Jersey" 2,080 pounds.

Mr. MORRIS.—Now, some of these ships, when they arrived at the Puget Sound Navy Yard, that is, the battleship fleet, had some supplies and provisions probably on the Atlantic Coast?

A. Oh, they all had some left, undoubtedly.

Q. And you were not able to deliver to them as many supplies as you anticipated they would take previous to their arrival?

A. Well, yes, that is true.

Q. That is true?

A. They had more supplies on hand than we expected to find.

Q. They had more supplies on board than you expected. You had every reason to expect you would furnish the Atlantic Battleship Fleet more supplies than they took. You did not know they had laid in supplies on the Atlantic Coast?

A. Somewhere else. That argument works both ways.

Q. I am just asking you to answer the question.

Mr. ALLEN.—He is answering it.

A. (Continuing.) They took a great many more of some certain items than we anticipated; they also took a great deal less in some of them.

Mr. MORRIS.—Yes, that is a natural condition. Now, this zinc that was furnished to the "Nebraska" while she was lying over there at the Puget Sound Navy Yard was supplied April 18, 1908? [139—92]

A. The "Nebraska," did you say?

Q. Yes, sir.

(Testimony of Ray Spear.)

A. I believe that was the date, yes, sir.

Q. And those supplies were furnished, that is, the zinc was furnished to the "Nebraska" by you and your assistants, among whom was the defendant Meyer, about six or eight weeks previous to the arrival of the Atlantic Fleet at the Puget Sound Navy Yard?

A. It was about four weeks there apparently.

Q. Well, about four weeks? A. Yes.

Q. The time is immaterial. It was after that sometime. Now, there were eight ships in the battleship fleet? A. Our share of it.

Q. Your share of the ships that you expected to outfit with supplies were one-half of the entire Atlantic Fleet, or eight vessels? A. Yes, sir.

Q. Now, you read from Plaintiff's Exhibit "A," that is the stock card, the names of several vessels to whom you had issued zinc, or supplied zinc, and some of those vessels, or the most of them, I believe, were members of what we call the Pacific Fleet?

A. Well, I didn't pay much attention when I read, I merely ran down the list.

Q. Well, that is a fact, is it not?

A. I think it was about evenly divided.

Q. Well, he says it is about evenly divided, and I think he is right.

Mr. MORRIS.—And these ships of the Pacific Fleet were the ships that you did not wish to immediately supply in January, February, [140—93] March?

(Testimony of Ray Spear.)

A. Sometime I think after February that I made that protest.

Q. Now, Mr. Spear, I desire to direct your attention to requisition 438, which I understand to be the files of the storekeeper pertaining to the zinc mentioned in the indictment in this case.

A. You want me to refer to it?

Q. I say, I understand that to be true. I desire to direct your attention now to a question. You signed that requisition, I understood you to state?

A. Yes, sir.

Q. And at the time you signed it you knew that it called for 50,000 pounds of boiler zinc?

A. Yes, I have no doubt of that.

Q. No doubt of it at all. Now, Mr. Spear, in all of your years of experience as a storekeeper you never knew of such zinc as mentioned or requisitioned for in this case to have been purchased for as low as five cents per pound, have you?

A. The zinc purchased for five cents a pound?

Q. Yes.

A. No, I can't recall any prices at all; I wouldn't remember them.

Q. The requisition showed that it was for 50,000 pounds of zinc, boiler zinc? A. I believe so.

Q. And it also showed that it was to be purchased at an estimated price of 12½ cents?

A. I think that was the figure quoted; I am just answering from memory here.

Q. Well, that was on the requisition at the time you signed it, was it not? [141—94]

(Testimony of Ray Spear.)

A. The estimated price was on the requisition.

Q. Then if the price of 12½ cents, the estimated price, was on the requisition, and the number of pounds, 50,000, why, any person would know by a glance at the number of pounds and the estimated price per pound, at 12½ cents, that that amount of zinc would cost more than \$625, would they not?

A. Well, you would think so, yes, if you had that paper to examine.

Q. No question about it. Now, I understood you to say in your direct examination that you had no recollection, at the time you were testifying, that was last Saturday, of having signed this requisition?

A. No, I don't remember that in relation to any hundreds of other requisitions that I signed.

Q. That is, there might be brought into this courtroom probably two or three thousand requisitions that you signed while you were there at the Puget Sound Navy Yard, and if you were asked, in the presence of this jury, if that was your signature you would answer yes, and if you were asked if you remember of signing it, or that particular transaction, you would answer that you did not remember the transaction, would you not?

A. Unless there was something that had brought that particular transaction to my notice.

Q. Now, answer my question, Mr. Spear. I asked you a question, and that would be true, would it not?

A. In the main that would be true, but I will qualify that by saying there might be some requisition

(Testimony of Ray Spear.)

in those two or three thousand that you mention that I would recall.

Q. Now, Mr. Spear, there are exceptions to all rules, of course, [142—95] and there might be, possibly be an exception in that matter? A. Yes.

Q. But if such requisition should appear it would be because it was a transaction that took place between yourself and some person at that time that attracted your attention to it? A. Yes.

Q. And that would be the only reason you would have? A. That is all.

Q. You would be compelled to answer, in the presence of this jury, that “At the present time I have no recollection of signing that requisition, although it is my signature”? A. Yes, that is a fact.

Q. Now, you were also asked this question this morning by Mr. Allen, if at the present time you had any recollection of signing said requisition when it contained the time limit as is specified thereon, to which you answered that at the present time you had no recollection, is that right? A. Yes, sir.

Q. And the same questions I asked you awhile ago in regard to this other transaction would be true in regard to that, that is right, is it not? A. Yes.

Q. I think that you, on Saturday, I may be wrong, if I am you correct me, I think that you gave as a reason why you did not remember signing that requisition was the amount involved being large, \$6,250?

Mr. ALLEN.—I submit, your Honor, he did not state.

(Testimony of Ray Spear.)

A. No.

Mr. MORRIS.—You didn't so testify? [143—96]

A. I probably didn't recollect it, because the amount—

Q. No, I understand—

Mr. RIDDELL.—Let him answer it.

A. I gave as my reason I didn't remember it because the amount in fact was very low, because when I signed that I assumed it was only \$625, from all the record that has been presented here to me.

Mr. MORRIS.—Well, I understood you to state awhile ago you saw there was 50,000 pounds of zinc that was on that requisition, and that it was to be purchased, the estimated purchase price was 12½ cents? A. Yes.

Q. And you, of course, incidentally would know, if you noticed six hundred and twenty-five on there, that it was a mistake, would you not?

A. No, we are not concerned very much about that.

Q. I am not asking you about being concerned.

A. It had been the practice of general storekeepers, myself in particular, and I think you will find it with every Government employee, that in signing papers that come to his desk he is concerned more with the money value than anything else, I know I am, regarding stores. And my habit has been, in signing requisitions, as the first copy which I sign does not contain any money values at all, I merely slide the first copy up, glance at the total estimate on that requisition, and, if it is not startling, to sign it, if it is nothing that has no appreciable amount.

(Testimony of Ray Spear.)

Q. Now, did I understand you to say that the reason that you did not remember—

A. Well, I think possibly that was the reason. I didn't say it [144—97] was the actual reason. I don't recollect the requisition at all.

Q. You don't recollect it at all?

A. No, sir, I do not.

Q. Well, that is all.

A. I gave as my reason here, perhaps, I didn't recollect it.

Q. But have you any recollection at the present time of having signed a requisition within either a few days before or a few days after the first of April, 1908, in which the amount involved was \$8,000, or thereabouts? A. No, sir.

Q. And it was for zinc?

A. No, sir, I don't remember that.

Q. You would not say that you did not sign such a requisition as that? A. No, I would not.

Q. Sir? A. No, I would not say that I did not.

Q. And if a requisition of that kind was presented to you now you would answer that you have no recollection of signing it, but that your signature appeared there and that you did sign it? A. Yes, sir.

Q. And that is true as far as this transaction is concerned? A. Yes, sir.

Q. Now, Mr. Spear, after this requisition for this boiler zinc was signed by you, tell the jury where that requisition was sent, if any place.

A. It was sent to the Bureau of Supplies and Accounts, Navy Department, Washington, for further

(Testimony of Ray Spear.)

action. Of course, there is the different routings of the various copies. [145—98]

Q. Directing your attention to Plaintiff's Exhibit Number "4," which is requisition 438, I will ask you if you are able to state from said exhibit—

Mr. ALLEN.—What is the number of the requisition?

The WITNESS.—438.

Mr. MORRIS.—The photographic copies in that folder?

A. No, sir, I was just going to ask for it, because I can't identify anything from this.

Q. (Handing papers to witness.) I understand the photographic copies belong in exhibit "4." That is exhibit "4," though, that he holds in his hand.

A. This is marked exhibit "5."

Q. "5," is it? Now, immediately after this requisition in question for this 50,000 pounds, of zinc was prepared in your office and signed by you it first went to the Paymaster General? A. Yes, sir.

Q. Of the Navy? A. Yes, sir.

Q. Now, the Paymaster General of the Navy was Chief of the Bureau of Supplies and Accounts?

A. Yes, sir.

Q. And as Chief of the Bureau of Supplies and Accounts he was supposed to have, and did have, supervision, the highest authority, over the purchases of all supplies of every nature and description for the navy of the country?

A. Well, there is qualifications to that.

(Testimony of Ray Spear.)

Q. Well, then, state the qualifications, will you, please?

A. The Secretary of the Navy reserves the right to modify or [146—99] change the directions of the Paymaster General at any time, as he has done in this case.

Q. As he has done in that case. Now, I am coming up to that. Well, then, will you tell this jury what the duties of the Paymaster General of the Navy were in reference to this requisition as shown by the photographic copies, being Plaintiff's Exhibit "5"?

Mr. MORRIS.—Read the question.

Q. (Question repeated.)

A. Well, as this requisition was in excess of \$500 it required action by the Secretary of the Navy himself before the purchases without advertisement could be carried out.

Q. And if it was in excess of \$500 only by a hundred and twenty-five dollars the same condition would exist, would it not? A. Yes, sir.

Q. If this requisition called for \$6,250 or for \$625, it would be just the same, as far as the procedure was concerned? A. Yes, sir.

Q. Now, is it not a fact, from the record, that is, Plaintiff's Exhibit "5," that after said requisition reached the Paymaster General of the Navy it was referred by him to the Secretary of the Navy?

A. Yes, sir, it bears their stamp here (showing).

Cross-examination (Resumed).

(By Mr. MORRIS.)

Q. Mr. Spear, I wish you would explain to the jury

(Testimony of Ray Spear.)

the application and meaning of the word “advertisement” as used by you in your direct examination. Just speak up so the jury can hear.

A. Advertisement, as we refer to it in the Naval Service in the purchase of supplies, means publication by advertisement in one [147—100] of the daily papers, one or more of the daily papers.

Q. Is it not a fact, Mr. Spear, that when you refer to advertisements, as we have in this particular instance, that it means that the Department at Washington prepares printed proposals and mails them broadcast throughout the United States to the known dealers?

A. Well, that is also done, but I don’t believe that is the meaning of the word “advertisement.”

Q. I asked you the question if that is not what it means.

A. No, sir, I don’t understand it as such. That is possibly one way of advertising that particular transaction, but that is not the meaning of the word.

Q. That is what I am talking about, this particular transaction. I limit it to this question.

Mr. ALLEN.—I submit he may be permitted to answer the question.

A. That is not my understanding of the term “advertisement.”

Mr. MORRIS.—That is, you refer to it now as a general term, “advertisement”?

A. I am referring to it as it appears on the face of that requisition, that is in question.

Q. Well, now, I am asking you—there was no ad-

(Testimony of Ray Spear.)

vertisement on this requisition, was there?

A. The word "advertisement" appears on the face of that requisition, in which we request that advertisement be waived.

Q. You requested that it be waived?

A. Yes, sir.

Q. But now going back, if this particular requisition had been advertised, in the meaning of advertisement as applicable to this transaction, it would have meant that the Department at Washington would prepare printed proposals and circulate them [148—101] throughout the country to the known dealers. A. Well, do that in any purchase.

Q. Answer my question, Mr. Spear.

A. No, it doesn't mean that at all.

Q. You said a moment ago, I understood you, that in this particular instance it did mean that. Now, what do you mean by that?

A. I said a minute ago that advertisement, according to naval understanding and my understanding, is the publication of a printed notice in the daily paper, not the sending out of proposals, as you suggest there.

Q. What did you mean when you said advertisements with reference to this particular transaction?

A. Well, sending out these printed proposals that you speak about would be one way of advertising to a vast number of bidders that the Government was in the market for certain supplies. It might be looked upon as one form of advertising, but that is not the meaning of the word "advertisement" as it

(Testimony of Ray Spear.)

appears on our requisitions. I think it is a question of interpretation a good deal any way.

Q. Sir?

A. I think that is a question of interpretation.

Q. Well, we believe that we have the rules and regulations prescribed, and I simply want to test your memory on that subject, is all. (Handing paper to witness.) Directing your attention now especially to Plaintiff's Exhibit "5," that is the photographic copy of the requisition in question. Now, that requisition, or the photographic copy of that exhibit, does not waive advertisement, or does waive advertisement, but does not mean the waiving of legitimate [149—102] competition, does it?

A. Never.

Q. Sir? A. Never.

Q. There is nothing on said exhibit that waives legitimate competition? A. Nothing at all.

Q. Sir? A. Nothing at all.

A. Nothing at all to waive competition.

Mr. MORRIS.—Now, suppose, Mr. Spear, that this requisition had been sent to the Bureau at Washington, and by the Bureau at Washington advertised, it would have required from three to four, five or six months to have received that zinc at the Puget Sound Navy Yard, would it not? Now, say yes or no to that.

A. We might expect it to take at least three months; I think hardly as long as six months.

Mr. MORRIS.—All right, sir. We will take it at three months. I understood you to testify on yester-

(Testimony of Ray Spear.)

day that the Atlantic Battleship Fleet, or some part thereof, arrived at the Puget Sound Navy Yard in May of 1908? A. Yes, sir, that is correct.

Q. Speak up.

A. You were making a statement, as I understood it.

Q. I am asking you if that is a fact.

A. That is a fact.

Q. This requisition calling for this 50,000 pounds of zinc was signed by you on or about the first of April, 1908? A. That is correct. [150—103]

Q. It is a fact, is it not, as shown by the records in this case, that fifty odd thousand pounds of zinc was requisitioned for along in December, I believe, of 1907? A. Yes, sir.

Q. And that zinc was not delivered. That zinc was to be supplied by the Navy Department at Washington, that is, the bids were to be called for by the Navy Department at Washington? A. Yes, sir.

Q. And be advertised, as you have suggested, we will say, for the purpose of the question, that zinc was not delivered to the Puget Sound Navy Yard until some three or four months after the requisition was issued; is that not true?

A. The exact date I don't remember.

Q. But, I say, that is about it, approximately?

A. Well, I think so, without knowing—

Q. I am not going to take up the time of the Court to examine those things specifically now.

A. Yes, I think that is approximately correct.

Q. I direct your attention again to Plaintiff's Ex-

(Testimony of Ray Spear.)

hibit "8" and ask you to examine same and see if you can state to the jury the date of the requisition for the zinc about which we have just been speaking, and the date of the delivery to the Puget Sound Navy Yard.

A. It appears here that on the 18th of March, 1908, there was a delivery of approximately 50,000 pounds, that is, on the 18th day of March.

Mr. MORRIS.—Then, if that zinc was called for in December it would be the remaining portion of December, January, February and up to that time in March? [151—104] A. Yes, sir.

Q. And at the time that the requisition in question was issued you anticipated the Pacific Squadron and the Atlantic Battleship Fleet?

A. Now, which requisition?

Q. You were not at the yard when that requisition was called for? A. No, sir.

Q. But, I say, it was anticipated that the Pacific Fleet and the Atlantic Battleship Fleet would be at the Puget Sound Navy Yard within the course of six months?

A. Well, I don't know whether that was known up there at the navy yard when that requisition was started.

Q. That may be a fact, though, as far as you know?

A. It is possible.

Q. And it is very probable that was the fact, is it not? A. Well, I can't answer to that, sir.

Q. Can't you answer as an expert the probability of such a condition as that existing?

(Testimony of Ray Spear.)

A. I don't know what information or instructions had been issued prior to my arrival up there.

Q. I am not asking you that; I am asking you if it is not probable, from your experience.

A. I cannot answer that; I do not know what instructions had been issued to the General Storekeeper at Bremerton before my arrival.

Mr. MORRIS.—Now, Mr. Spear, listen to my question. I asked you if it is not probable—I want you to answer as an expert in this matter—if that requisition was not issued in anticipation of these fleets that were coming. [152—105]

A. Possibly in anticipation of the Pacific Fleet; I do not know about the Atlantic Fleet.

Q. All right, sir. You don't know about the Atlantic. All right. But is it not a fact that it is very probable that it was issued in anticipation of both the Pacific Fleet and the Atlantic Fleet?

A. I said I don't know.

Q. Mr. Spear, in the course of your examination by the District Attorney I heard you use the word "proposal" a good many times. I would like you to state, so that we can all understand, what you mean by the word "proposal" as applicable to this transaction only.

A. Proposals, as we understand it, are blank forms used by purchasing pay officers in sending out their requests to firms to bid on certain classes of items of material.

Q. Yes, sir. Now, a proposal originates with the Purchasing Paymaster, does it not?

(Testimony of Ray Spear.)

A. The blank proposal does, yes, sir.

Q. Yes? A. Yes, sir.

Q. The proposal that was sent out by the Purchasing Pay Officer originated, not in the storekeeper's office at Bremerton, but in the Paymaster's office here in the city of Seattle, did it not?

A. That is correct.

Q. This defendant Meyer's duties did not require him to send out that proposal? A. No, sir.

Q. A proposal was a request upon the merchant to whom it was addressed to come in and bid, if they so desired, upon [153—106] this quantity of zinc that was wanted? A. That is correct.

Q. That is right, is it not? A. Yes, sir.

Q. And the defendant Meyer's duties were not connected with that service in any respect?

A. No, sir.

Q. Now, while we are on that subject, so that we may all understand as we proceed, is it not a fact that at the time these proposals were sent out that it is the duty of the Paymaster to designate thereon the time when the Paymaster is to receive from the merchant said proposals? A. Yes, sir.

Q. And after said proposals are received by the Paymaster it is his duty to open those proposals in public? A. I believe that is the custom, sir.

Q. Yes, sir. And it is further his duty to award the contract to the lowest acceptable bidder?

A. Yes, sir, that is correct.

Q. And that was the condition that existed at the time this requisition, as shown by Plaintiff's Exhibit

(Testimony of Ray Spear.)

Number "5," was issued? Say yes or no.

A. So far as I know. You know I am testifying to something I have no personal knowledge of now.

Q. You are testifying here as an expert, and you know these questions to be true?

A. You are confining me to a certain fact here under certain specific cases.

Q. Now, when the Paymaster accepts a bid then he issues what is known as an award? [154—107]

A. Yes, sir.

Q. That is, he awards the contract to the successful bidder? A. Yes, sir.

Q. The person who has put in a successful proposal? A. Yes, sir, that is correct.

Q. I want to call your attention again to Plaintiff's Exhibit "5" and ask you if it is not stated thereon that delivery was to be made within fifteen days after the award, or notification of the award.

A. It seems to be obliterated here, but I think it is fifteen days, as nearly as I can make it out. The stamp seems to be placed right over it.

Q. You testified in your direct evidence fifteen days.

A. Did I, sir? Well, I may have taken that information from one of the other copies.

Q. Well, let us see if we have got a copy that is better than that. A. I believe it is fifteen days.

Q. Fifteen days. Now, that is fifteen days after the award had been made? A. Yes, sir.

Q. That means fifteen days after the Paymaster's office, after the Paymaster of the United States Navy

(Testimony of Ray Spear.)

had awarded that contract to the successful bidder, does it not? A. Yes, sir.

Q. And it means absolutely nothing else, does it?

A. That is correct.

Q. Do you know the location of the important zinc manufacturing companies of the United States?

A. No, sir, I do not. [155—108]

Q. They are in the middle west, are they not?

A. Well, I said I didn't know, sir; I really don't know anything about it.

Q. Did you ever order supplies during your life as a storekeeper? A. Yes, sir.

Q. From a large manufacturing company of zinc in the State of Illinois?

A. I know of the firm at La Salle, sir.

Q. Suppose this contract had been awarded to some firm in the State of Illinois by the Paymaster, could they not have delivered that zinc to the Puget Sound Navy Yard within fifteen days after they had been notified they had received an award?

A. Yes, sir, I think they could.

Q. You think they could. There is absolutely no question in your mind about that, is there?

A. Well, I know of a case where it was done in less time than that.

Q. Than the fifteen days? Now, Mr. Spear, as we travel along there, the custom in the Navy Pay Office was always made sufficiently liberal—

A. I didn't catch the first part.

Q. (Question repeated.) —so that the Purchasing Pay Officer might purchase within the bounds of

(Testimony of Ray Spear.)

that estimate, or ten per cent above? A. Yes, sir.

Q. That is true, is it not? A. Yes, sir.

Q. And one of the principal objects of making the estimate liberal was in order that the Paymaster would probably be able [156—109] to secure bids from the supply men within that estimate?

A. Yes, sir, that is correct.

Q. And if an estimate was made too small, then the purchasing pay office, being unable to purchase said supplies within that amount, would direct that subject back again to your office, the storekeeper's office, in which the requisition originated?

A. That is correct.

Q. That is true, isn't it? A. Yes, sir.

Q. And during your service as Paymaster, when this defendant, Edwin F. Meyer, was working under you, on several instances he placed the estimate on certain articles too low and you called his attention to it, did you not? A. That is correct.

Q. Yes, sir. Now, sir, suppose that 50,000 pounds of zinc was to be requisitioned for a fleet that was to make a cruise around the world, or a cruise for six months, and the estimate for that zinc had been small and a bidder may not have been secured in the market, this fleet would have been held or compelled to sail without the zinc, would it not?

A. Well hardly—I don't believe that it would have caused that inconvenience to the fleet.

Mr. MORRIS.—Well, tell the jury what inconvenience it would have caused them.

A. It would have caused some slight delay on the

(Testimony of Ray Spear.)

part of our office in rearranging the requisition or increasing the estimate.

Q. Then, sir, it would have caused that unquestionably, would it [157—110] not?

A. It would have caused a certain amount of inconvenience.

Q. Then you would have been compelled to re-requisition for that article, would you not?

A. Yes, sir.

Q. You would have been compelled to send it to the Navy Department of the United States at Washington, would you not?

A. Well, we could have secured their approval to a change in the estimate by telegraph, sir.

Q. Yes, you could have done that, but you would have to lay before the Department all these facts, would you not? A. Yes, we would have to.

Q. That would necessitate a great delay, would it not? A. Some delay.

Q. Then, after you had the sanction of the Navy Department, you would be compelled to again take up with the Paymaster the question of the purchase, would you not?

A. He would have to issue new proposals.

Q. New proposals. And time for those proposals to have been received would have had to have been made? A. Yes, sir.

Q. And then the award made? A. Yes, sir.

Q. And then the delivery of the goods. All of those transactions would have had to have been gone through again? A. Yes, sir.

(Testimony of Ray Spear.)

Q. Now, referring again to the Paymaster's Office, it is a fact, is it not, that the Paymaster of the Puget Sound Navy Yard, and the highest officer in the United States Navy at Washington, was not controlled by the estimates that are placed [158—111] upon the requisitions, but are supposed to go out in the market and buy these goods as cheaply as they can? A. That is correct.

Q. That is true. Mr. Spear, at the time that you were at the Puget Sound Navy Yard as Storekeeper, and especially at the time involved in this requisition, Mr. Orr, Paymaster Orr, was then in charge of the Paymaster's Office here in the city of Seattle, was he? A. Yes, sir.

Q. He was a bonded officer of the United States Government? A. Yes, sir.

Q. Now, Mr. Spear, I desire to direct your attention to the inspection, and shall be limiting it to this zinc transaction.

Mr. MORRIS.—Mr. Spear, I want to call your attention, I think, to Plaintiff's Exhibit Number "4." That is another photograph copy (handing papers to witness). Does said exhibit show who the inspecting officers were of that particular zinc in question?

A. Yes, sir.

Q. Now, Mr. Spear, it is a fact, is it not, that after the award has been made by the Paymaster, in the usual course of time this zinc was delivered, or in the ordinary course of procedure this zinc was delivered at the Puget Sound Navy Yard? A. Yes, sir.

Q. After the zinc arrived at the Puget Sound Navy

(Testimony of Ray Spear.)

Yard there was issued a call for inspection; is that right? A. Yes, sir.

Q. That call for inspection was a written notice to *the* inspect this zinc, that the zinc was there and for them to inspect it? A. Yes, sir. [159—112]

Q. That is right, is it not?

A. That is correct.

Q. Did this defendant, Edwin F. Meyer, have anything to do with the inspection of that zinc?

A. No other than merely see the clerk whose duty it was to get it out promptly.

Q. That is no part of *these* inspection?

A. That is—

Q. That is simply a notice to the inspectors to inspect? A. Yes, sir, that is all.

Q. My question was, did this defendant Meyer have anything to do with the inspection of that zinc?

A. With the actual physical inspection of it, he did not.

Q. That is what I am talking about. He had not?

A. No, sir.

Q. Plaintiff's Exhibit "4" shows that Captain Stacy Potts was one of the inspectors, does it not?

A. Senior member, yes, sir.

Q. State to this jury who Captain Stacy Potts is, if you know.

A. He is now a commander retired.

Q. What position did he occupy at the time of the inspection, as shown by that exhibit?

A. He was the engineering officer of the yard, Navy Yard, Bremerton.

(Testimony of Ray Spear.)

Q. When you speak of engineering officer, explain to the jury what you mean by engineering officer?

A. He is the officer in charge of the Steam Engineering Department of the yard. He has cognizance over repairs to boilers, and ships, and any machinery operated by steam. [160—113]

Q. He was a captain in the United States Navy?

A. He was at that time, yes, sir.

Q. Yes, sir, at that time. Now, there is another name that appears upon said inspection, Lieutenant Commander Hayes; is that right? A. Yes, sir.

Q. Now, what were Lieutenant Commander Hayes' duties at the Puget Sound Navy Yard at the time of that inspection?

A. He was the Equipment Officer of the yard.

Q. Equipment? A. Yes, sir.

Q. And you mean by that what?

A. He had charge of that class of material that related to the equipment of the ship, rigging, sails, flags and electrical material, that is, electrical machinery. Electrical machinery does not come under the Engineering Officer, it did not at that time.

Q. And these articles which you have just mentioned are some of the duties that this defendant Meyer was presumed to perform in issuing requisitions for?

A. I don't understand that question.

Q. (Question repeated.) That is, when such articles as you have just mentioned were called for the defendant Meyer was required to issue requisitions for those?

(Testimony of Ray Spear.)

A. Yes, sir, that is correct. I didn't understand.

Q. Now, while we are on that subject there, permit me to deviate just a moment. Is it not a fact that at the time this zinc requisition was issued by the defendant Meyer, and previous thereto, and subsequent thereto, that the Engineering Department of the Puget Sound Navy Yard also issued requisitions [161—114] for zinc?

A. Yes, sir, they could originate a requisition.

Q. They could originate one? A. Yes, sir.

Q. Then, as far as you know, they did originate this, speaking from memory, now? A. Yes, sir.

Q. And is it not a fact that after originating the requisitions they placed upon said requisitions the estimated cost? A. Yes, sir.

Q. And those requisitions coming from the Engineering Department were separate and distinct from the duties of this defendant Meyer thereto?

A. That is entirely distinct. If you will allow me, I will explain a feature of that that I think will make the matter entirely clear to the jury.

Q. I have no objection to you explaining it.

A. The different heads of the Yard Department cannot originate, or never did originate, a requisition for stock. They could originate a requisition for material that was needed for a specific job that they had in sight, but they could not originate a requisition under Naval Supply Fund for stock.

Q. But the distinction that you make is simply this: They had the same authority and the same

(Testimony of Ray Spear.)

power to requisition for stock within their limit as this defendant had to requisition for stock for any other purpose.

A. Not for stock, for the job that they had in sight.

Q. For what?

A. They could requisition for material to cover a specific job. [162—115]

Q. Yes. A. The work being in sight.

Q. In other words, they had that authority, and they usurped it, if they had a job that required the use of 5,000 pounds of zinc they had a right to requisition for 5,000 pounds of zinc and place upon said requisition the estimated cost thereof?

A. Provided we didn't have it in stock, yes, sir.

Q. Provided you didn't have it in stock?

A. Yes. They couldn't requisition for anything if we had it in the storehouse.

Q. But they had the authority to requisition, if you did not have it in stock? A. Yes, sir, that is right.

Q. And, as a matter of fact, the records of the Puget Sound Storekeeper's Office shows in a great many instances they did requisition for zinc and placed upon said requisition the estimated cost thereof? A. That is possibly correct, sir.

Q. Yes, sir. This defendant Meyer had absolutely nothing to do with the physical inspection of the zinc in question, had he?

A. Nothing at all, sir.

Q. These inspecting officers to whom you refer were appointed by whom?

A. By the Commandant of the yard.

(Testimony of Ray Spear.)

Q. The Commandant of the Puget Sound Navy Yard? A. Yes, sir.

Q. The highest officer in that yard?

A. Yes, sir. [163—116]

Q. That same Commandant at the yard now that was there when you were there?

A. Oh, we have had three or four, sir, since then.

Q. Directing your attention to Plaintiff's Exhibit "5," photograph copy of the requisition in question, is it not a fact that said requisition called for 50,000 pounds of zinc only? A. One item, yes, sir.

Q. And is it not a fact that some 59,000 pounds of zinc was delivered by the person to whom the award was made?

A. We paid for 59,000 pounds here, sir.

Q. You paid for 59,000 pounds. And you paid for those 59,000 pounds on the inspection of these officers about whom you have just been speaking?

A. Yes, sir; they passed 59,000 pounds.

Q. They passed 59,000 pounds. Then these inspectors inspected and passed the 59,000 pounds, and a warrant, or a check was issued in payment of the 59,000 pounds on their inspection? A. Yes, sir.

Q. Now, Mr. Spear, after this inspection had been made and a return by said inspectors, their inspection having been made to your office, the next procedure was the issuing of a voucher, was it not?

A. Yes, sir, that would be—

Q. Explain to the jury what you mean by a voucher.

A. A voucher or public bill is a form used by the

(Testimony of Ray Spear.)

Navy Department to pay the merchant for any material or services that they have rendered. This is the form (showing).

Q. And that voucher was issued for the full amount of the 59,000 pounds? [164—117]

A. Yes, sir.

Q. And no more?

A. The quantity agrees with the quantity passed.

Q. The defendant had nothing to do with issuing that voucher, had he?

A. Only general supervision.

Q. Under his supervision. But it was issued in accordance with the call?

A. Yes, sir, that is correct.

Q. And it was his duty to issue that voucher under directions from his superior officers?

A. Yes, sir.

Q. Officer Spear, directing your attention to Plaintiff's Exhibit "14," same being requisition No. 649, I will ask you to state, if you can, from the records of said exhibit, the amount of the estimate placed by defendant on said requisition.

A. You are relating now only to the toban bronze at forty cents a pound?

Q. Sir? A. At forty cents a pound?

Q. That is the particular article of the toban bronze on which you were examined yesterday?

A. Yes, sir.

Q. And that requisition shows at the time it was prepared by this defendant Meyer that he placed thereon an estimate of forty cents.

(Testimony of Ray Spear.)

Q. And it further shows, does it not, that that toban bronze on which this estimate had been placed by the defendant Meyer at forty cents was purchased by the Paymaster at [165—118] fifty cents?

A. In part, yes, sir.

Q. Well, didn't he pay fifty cents for it?

A. Well, there were two awards out on that, sir. Whiton Hardware Company got part of it and the Great Western Smelting Company got the other part.

Q. Well, he did pay to the Great Western Smelter fifty cents? A. Yes, sir.

Q. Ten cents more than this defendant Meyer placed upon the requisition? A. Yes, sir.

Q. Mr. Spear, during the time that you were Paymaster, and covering the period involved in this trial, is it not a fact that Mr. Meyer called your attention to the manner in which the W. A. Corder Company was doing business with the Puget Sound Navy Yard?

A. Yes, sir, I remember something of that.

Q. And that is the same W. A. Corder that is indicted and now being tried in this case on a charge of conspiracy? A. Yes, sir.

Q. And, briefly, is it not a fact that from the reports you received from the defendant Meyer that you took up with the Department at Washington the question of debarring the W. A. Corder Company from doing business at the Puget Sound Navy Yard?

A. Yes, sir, that is correct.

Q. That is a fact, is it not? A. Yes, sir.

(Testimony of Ray Spear.)

Q. Is it not further a fact that this defendant, Edwin F. Meyer, [166—119] called your attention to the excessive prices that were being paid by the Puget Sound Navy Yard for zinc that was purchased from local dealers, or on the western coast, and that you prepared, after said conversation, a telegram and sent it to Washington relative to that matter? If you have no recollection I will get you the telegram.

A. I would have to refresh my memory. I don't recall that.

Q. You have no recollection of it. I don't suppose you would at this time, but I will furnish you the telegram. While we are getting the telegram, the trouble that you were having with the W. A. Corder Company, and the reason that you wanted the firm debarred from doing business with the yard, was on account of the slowness of the deliveries of the W. A. Corder Company after the awards had been made to them?

A. Yes, that was correct.

Q. And for no other purpose than that?

A. Yes, that is correct.

Mr. MORRIS.—Now, Mr. Spear, I was asking you in regard to a telegraphic communication that was inaugurated by you, or the defendant, under your advice, at his suggestion, and I now call your attention to contract number 12,653. That folder is one of the records of the Storekeeper's Office, is it?

A. Let me see it, sir. (Exhibiting papers to wit-

(Testimony of Ray Spear.)

ness.) Yes, sir, this appears to be from our records.

Mr. MORRIS.—I suppose you would have no objection to having this marked defendants' identified exhibit.

Mr. ALLEN.—It comes from Mr. House?

Mr. MORRIS.—Yes, sir. [167—120]

Mr. ALLEN.—That is all right.

Mr. MORRIS.—Mr. House furnished it to us.

(Papers referred to marked Defendants' Exhibit "A" for identification.)

Q. Directing your attention to telegrams contained in Defendants' Exhibit "A" for identification, I will ask you to examine—

Mr. ALLEN.—Mr. Morris, does that telegram come out of this folder?

Mr. MORRIS.—So you will understand it, we asked for a telegram. Mr. House went out; he knew what we wanted, I took it for granted, and brought into this courtroom this folder and these telegrams were contained in that folder.

Mr. ALLEN.—Thank you. That is correct.

The COURT.—And everything is marked Exhibit "A"?

Mr. ALLEN.—Yes, sir, that is included in there.

Mr. MORRIS.—Yes, sir, for identification.

Q. Handing you a bunch of papers that were taken from defendants' identified exhibit "1," I will ask you now if you can answer the question I propounded to you a while ago about the defendant originating a telegram, and by you signed and transmitted to Washington, calling the Department's attention to

(Testimony of Ray Spear.)

the excessive price that zinc had been purchased at?

A. On the date that that telegram was sent I was in the eastern part of the United States.

Q. You were in the eastern part of the United States? A. Yes, sir.

Q. Then the defendant Meyer—that telegram was sent, though, was it? [168—121]

A. It appears to be taken from the—

Q. Now, just kindly read this to the jury, what it is.

A. "Navy Yard, Puget Sound, Washington, February 19, 1910: To Paymaster General, Navy Department, Washington, D. C. Referring to class 52, contract 12,653, boiler zines required for 'Tennessee' and 'Washington,' contractor reports can ship like order by rail immediately at eight ninety. Request amendment to contract to cover immediate shipment, order to be followed by wire tracer. Recommend waiver of inspection at works. Cost of local purchase prohibited."

Q. Cost of local purchase prohibited.

The COURT.—What is it?

Mr. MORRIS.—The gentleman suggests we put it in evidence. It is now an identified exhibit. We are willing to have it offered in evidence now as Defendants' Exhibit "A."

The COURT.—Why, it has been identified.

Mr. MORRIS.—We want it, in fact, to go in as evidence, and they consent to it.

The COURT.—It is already in, because it has been read to the jury, and marked admitted.

(Testimony of Ray Spear.)

(Papers referred to received in evidence and marked Defendants' Exhibit "A.")

On cross-examination the said witness testified, as follows:

(By Mr. SCHLESINGER, Counsel for Defendant Emar Goldberg.)

Q. Mr. Spear, was it the purpose of your department to always insure prompt deliveries of purchases?

A. We tried to enforce prompt deliveries.

Q. In event of delayed deliveries would serious consequences not be liable to ensue?

A. To the Government, you mean, or to the firm?
[169—122]

Q. Yes, to the Government.

A. Well, it all depends. Sometimes—

Q. It all depends. For instance, if a fleet were at this port ready to be equipped, and you did not have on hand sufficient stores, what effect would that delay have on the Government and on the particular fleet?

A. Been rather inconvenient, to say the least.

Q. Would it also have resulted in a loss of large sums of money to the fleet?

A. You mean in the necessity of going out into the open market and purchase wherever possible?

Q. Yes.

A. It might have resulted to some loss.

Q. If any one of the fleet should have to remain here idle, would that also not cause great inconvenience?

(Testimony of Ray Spear.)

A. Provided such was the case it would, yes, sir.

Q. Did you have any complaints upon the part of *the* any of the commanding officers as to delays or neglect in your department? A. No, sir.

Q. In other words, the affairs of your department, so far as you know, were quite satisfactorily conducted?

A. Yes, sir, so far as actually getting the material to the fleet was concerned.

Q. And delay in obtaining supplies would mean a disarrangement of a large number of fixed plans, would it not? A. Yes, sir.

Q. Are you able to give from memory the extent of the sales of Mr. Goldberg's employer, the Great Western Smelting Company, and its subsidiary concern, the Fowler Metal Company, during the [170—123] four years preceding January, 1910, about?

A. Why, I haven't the slightest idea, Mr. Schlesinger.

Q. Well, refreshing your memory, Mr. Spear, is it not a fact that the total sales of both the Great Western Smelting Company and the Fowler Metal Company, aside from this present transaction, does not exceed the sum of \$10,000 over a period of about four years?

Mr. ALLEN.—Your Honor, I don't see how that is material, particularly as a matter of cross-examination.

The COURT.—I don't see where it is cross-examination.

Mr. SCHLESINGER.—If that is the Court's rul-

(Testimony of Ray Spear.)

ing I will not pursue it, but, at any rate, you have no recollection upon that subject?

A. I have not.

Q. You said on your direct examination yesterday that there was a rejection of certain goods supplied by the Great Western Smelting Company. Is it not true that rejections of goods were frequently made in other cases?

A. I don't think you quite understood me yesterday when I said there had been a rejection.

Q. Perhaps not.

A. The thing I remarked was peculiar at that time, that there hadn't been a rejection.

Q. There had not been a rejection. But rejections frequently occurred, did they not?

A. Yes, sir, quite frequently.

Q. And did you not also complain, or was there not a complaint made, about the slowness of delivery of goods emanating not only from the Great Western Smelting Company, but from other concerns as well?
[171—124]

A. We quite frequently had trouble on delayed deliveries.

Q. And were those complaints taken up with the authorities in Washington?

A. If it needed that drastic action.

Q. And they were frequently so taken up, were they not?

A. Occasionally; yes, sir. We could generally handle those matters ourselves here by enforcing a penalty.

(Testimony of Ray Spear.)

Q. I believe that in March of 1908 there was a purchase of zinc made by the Department in Washington from an Illinois concern, was there not, Mr. Spear?

A. It was delivered there in March, yes, sir.

Q. Delivered in March. Do you know when it was in point of time that order was left?

A. You mean from the time that we made requisition to the time of delivery?

Q. Yes.

A. Sometime in December, I believe, the requisition was started, and the final delivery was made in March.

Q. Now, that transaction was had with the Department itself, was it not?

A. I think that was in accordance with the advertised proposals.

Q. Yes, sir. And those goods were bought from a factory, were they not?

A. La Salle, Illinois; yes, sir.

Q. La Salle, Illinois. When the present transaction was entered into with the Fowler Metal Company, the subsidiary concern of the Great Western Smelting Company, the Department at Washington had before it all of the papers relating to this prior purchase, had they not? [172—125] A. Well,—

Q. They knew exactly what they had paid for zinc in March of that year, isn't that true?

A. I don't know what the Department had before them when they approved that second requisition, because this proposal is dated in May, and, of course, it wouldn't arrive back in the Bureau of Supplies

(Testimony of Ray Spear.)

and Accounts until after that had given approval to that second requisition.

Q. Will you please mention the date, if you can, of this contract with the Illinois concern?

A. I think that was in January sometime, wasn't it?

Q. Do you know when it was that those goods were delivered at the navy yard here?

A. This Illinois contract?

Q. Yes.

A. On the 18th of March, I think that card showed.

Q. Then the Department had before it all of the papers relating to that transaction, had it not? Would there be any question about that, Mr. Spear?

A. Well, I will have to examine dates here.

Mr. RIDDELL.—I don't think you have got the date of the contract out yet, Mr. Schlesinger.

Mr. SCHLESINGER.—I am not concerned with the date, I am concerned with months of time preceding it. To make this matter a little more simple, Mr. Spear, there wasn't any mystery with respect to this prior contract with the Illinois concern?

A. No, sir.

Q. Either as to quality, quantity or price, isn't that true?

A. No, sir, there wasn't anything wrong with that.

Q. Do you know how much stock of zinc available for purposes [173—126] of sale this Illinois concern had on hand in the month of April, 1908?

A. I haven't the slightest idea, sir.

Q. Do you know whether the Department at Wash-

(Testimony of Ray Spear.)

ington endeavored to purchase additional zinc from this same concern in 1908?

A. No, sir, I do not know.

Q. Do you know from personal inspection or examination the quality of the zinc sold by the Illinois concern as compared with the quality of the zinc sold by the Fowler Metal Company?

A. No, sir, I do not.

Q. Do you know whether or not any complaints were made as to the quality of zinc sold by the Illinois concern in March, 1908? A. I don't recall any.

Q. Do you know of any reason why the Government of the United States, acting through the Navy Department, did not deal a second time with this Illinois concern? A. I do not know.

Q. You testified at some length yesterday, Mr. Spear, with respect to the necessity of advertisement in certain cases. You are familiar, are you not, with this book of rules and regulations? A. Yes, sir.

Q. And you do know that in certain cases advertisement may be waived? A. Yes, sir.

Q. Directing your attention to the particular transaction in controversy, was, in that case, the necessity for the advertisement and the advertisement itself waived by the Government? [174—127]

A. Yes, sir.

Q. And through what particular officer of the Government was that waiver made or consented to?

A. Through the Secretary of the Navy.

Q. In other words, the Secretary of the Navy, the chief official of the Navy Department, in this particu-

(Testimony of Ray Spear.)

lar transaction waived the advertisement?

A. Yes, sir.

Q. You do not, of course, question, do you, Mr. Spear, the regularity of that act upon the part of the Secretary?

A. None whatever.

Q. And never have questioned it?

A. No, sir.

Q. You do not know what moved or actuated that official to give that waiver, do you, personally?

A. It was probably our request on the face.

Q. The purchase of that zinc was made for extraordinary conditions to arise, was it not?

A. Yes, sir, that was the—

Q. The arrival of that second fleet was a very unusual thing in the history of this navy yard, was it not?

A. Yes, sir, very much so.

Q. And you prepared yourself for that particular exigency, did you not?

A. Yes, sir.

Q. It was an exigency?

A. Yes, sir.

Q. It was an extraordinary occasion?

A. Yes, sir.

Q. And you conducted yourself accordingly?

[175—128] A. Yes, sir.

Q. Mr. Spear, have you exhibit number “4”?

A. Yes, it is up here on the desk.

Q. Mr. Spear, I will ask you to read to the jury that first item, commencing with the figures “50,000.”

A. “Item one, 50,000 pounds of zinc, rolled sheet boiler plat $1\frac{1}{2}$ by 6 by 12, estimated cost .125,” the total estimate is \$625.

Mr. SCHLESINGER.—Now, gentlemen, I will ask

(Testimony of Ray Spear.)

you all to look at that exhibit.

Mr. ALLEN.—Which one is that?

Mr. SCHLESINGER.—It is the one in evidence: That is exhibit “4.”

Mr. SCHLESINGER.—Through how many officers’ hands did that particular document pass?

A. That particular document only passed in my office, remained in my office.

Q. Did you look at it, Mr. Spear?

A. Well, possibly not that particular copy, but a copy exactly like it.

Q. Well, before this award was made to the Fowler Metal Company, how many officials of the Government had examined the preceding papers, about?

A. The Paymaster General, the Secretary of the Navy and the Purchasing Pay office at Seattle.

Q. And, of course, read those figures?

A. I imagine so.

Q. You have no complaint from the Department with respect to that form?

A. I don’t recall any. [176—129]

Q. Don’t recall any. Now, Mr. Spear, the same Paymaster who had purchased the zinc on previous occasions passed upon this particular transaction, did he not?

A. Well, no, I won’t say that, sir. I beg your pardon. Do you mean the other large quantity?

Q. Yes.

A. No, that was handled back in Washington, sir.

Q. Well, did he not have copies of the papers showing the amount for which that zinc had been pur-

(Testimony of Ray Spear.)

chased? A. No, I had that, sir.

Q. Well, did you not have in your office at least a half a dozen transactions covering the purchase of zinc with prices running all the way from twelve or eight to fifteen cents a pound?

A. Well, I don't know what that record is, but we had purchased zinc undoubtedly before.

Q. Ranging in price from eight to fifteen or sixteen cents, isn't that true?

A. I don't know those prices.

Q. Well, do you recall the lowest price?

Q. What is your recollection as to that, Mr. Spear?

A. I think they ran from seven cents up to twelve, thirteen or fourteen cents.

Mr. SCHLESINGER.—In other words, the prices fluctuated?

A. Yes, sir.

Q. Now, so far as you know, was there anything irregular in the matter of those prior sales?

A. So far as I know, I know nothing about it.

Q. In every respect—

A. I know nothing irregular about them, is what I meant. [177—130]

Q. So far as you know. In every respect the rules and regulations governing the Navy Department and the laws were faithfully carried out? A. Yes, sir.

Q. Now, after the delivery of these goods, and after the issuance of the pay check, were not all of the papers returned to Washington for the purpose of having them checked?

A. They have means of checking all these.

(Testimony of Ray Spear.)

Q. In other words, in Washington, in the Navy Department, they have an Accounting Department, have they not? A. Yes, sir.

Q. That Accounting Department is presided over by very efficient, expert accountants, isn't that true?

A. They are supposed to be, yes, sir.

Q. How often does the local Navy Yard Department report to the Accounting Department in Washington, at least once a month?

A. Well, it depends upon what report you are referring to.

Q. Well, have you monthly reports?

A. We generally make out returns quarterly.

Q. You make your returns quarterly. Now, in making your returns do you return accounts for stores and supplies on hand as well as for purchases?

A. Yes, sir, there are various monthly and quarterly returns. I can't specify all of them. They are innumerable. The principal reports we render are quarterly.

Q. In other words, you are checked up by the main office in Washington, D. C., are you not?

A. Yes, sir.

Q. And you were in this particular transaction?
[178—131]

A. Yes, sir, our office and the Purchasing Pay office in Seattle.

Q. Mr. Spear, this card here, bearing the caption "Account E" article, zinc plate for boilers, bears at the end of it "Limit of Stock 4,000, make requis-

(Testimony of Ray Spear.)

tion." Where was that particular account kept, in whose office?

A. This is the storeman's card in the plate metal shed at Bremerton.

Q. Did that card come under your inspection from time to time? A. I presume it did, sir.

Q. And you were familiar with its contents?

A. Well, as much as I am familiar with sixty thousand other cards of similar nature, say.

Q. Certainly. And this wasn't secret? A. No.

Q. Withheld from your view or inspection?

A. No.

Q. Was the quantity and quality of zinc called for in this particular transaction actually delivered?

A. Yes, sir. I assume that it was. The papers to indicate that.

Q. Was there any shortage complained of?

A. No, sir.

Q. Did the Government pay any more for that zinc than it had agreed to pay, as far as you know?

A. No, sir.

Q. I believe you testified, Mr. Spear, that this blue book, dated 1905, was in effect at the Navy Office during the year 1908? [179—131½] A. Yes, sir.

Q. I will now read in evidence, if your Honor please—

Mr. ALLEN.—Will you let me see the particular paragraph?

Mr. SCHLESINGER.—As soon as I find it, Mr. Allen. I will read from this book Article 1309, as a part of this cross-examination.

(Testimony of Ray Spear.)

Mr. ALLEN.—It is already in evidence, your Honor.

The COURT.—That has been read?

Mr. ALLEN.—Yes, sir.

Mr. SCHLESINGER.—Well, I will read it as a part of the cross-examination, a certain subdivision. “There shall be three forms of purchase made, subdivision A by written contract, under a formal written contract after advertising for and receiving sealed proposals. Subdivision B, by open contract for service. Subdivision C by open purchase, the exigencies of the service require the immediate delivery of all articles not obtainable under existing contracts and they are procured in open market.” I will now read Article 1303 in the same book.

Mr. ALLEN.—This is not in evidence, is it?

Mr. SCHLESINGER.—Well, we will offer it in evidence.

“All purchases and contracts for supplies or services for the Naval Service shall be made by or under the direction of the chief officer of the Department of the Navy.”

“1304: All purchases and contracts for supplies or services in any of the departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles or performance of its service. When immediate delivery [180—132] or performance is required by public exigency, articles or services re-

(Testimony of Ray Spear.)

quired may be procured by open purchase or contract at the places and in the manner in which said articles are usually bought and sold.”

“1339: Subdivision 3: In all cases where the legality of a purchase without advertisement and the public opening of bids depends upon the existence of a public exigency requiring immediate delivery, it is essential that it appear on the voucher or accompanying papers that the decision was made on that point before the property was purchased.”

Q. I will ask you, Mr. Spear, whether, in this particular transaction, it did appear upon the voucher, or some accompanying paper, that a decision was lawfully made with respect to the immediate purchase of these articles without advertisement?

A. Yes, sir.

Q. That is true? A. Yes, sir.

Q. In other words, the requirements of that regulation were carried out to the very letter?

A. Yes, sir.

Q. To make the matter absolutely plain, Mr. Spear, was there in this case a single deviation or departure from any known rule or regulation, so far as you know?

A. No, sir, the thing was in due technical form.

Q. Just one more question, Mr. Spear, and I will be through with you. Now, Mr. Spear, I will hand you a letter dated January 9, 1909, and ask you whether it contains your signature?

A. Yes, sir, that is my signature.

Mr. ALLEN.—(Examining paper.) We have no

(Testimony of Ray Spear.)

objection to that [181—133] letter going in. It is rather irregular cross-examination, I suggest to your Honor, but I haven't any objection to it going before the jury, only I call your Honor's attention to this fact, this is of date January 9, 1909, one full year, or nearly one full year, after this particular transaction.

The COURT.—Admitted.

(Paper referred to received in evidence and marked Defendant's Exhibit "B," reading same to jury.)

Q. Mr. Spear, were you in the habit of making weekly returns to the Navy Department of purchases? A. No, I don't believe so.

Q. Did your department keep a very accurate account of the amount of stores on hand, as a rule?

A. Not in items; they did in money values.

Q. Money values?

A. You say my department. Do you mean in my own office, or did you mean the Navy Department?

Q. The Navy Department. A. In Washington?

Q. In Washington?

A. That answers the question, in money values only.

Q. But the Navy Department practically had copies of all the accounts of your department, substantially?

A. Well, particularly of requisitions and public bills.

Q. Yes, sir. And they did have with respect to the fitting out of the fleet in 1908?

(Testimony of Ray Spear.)

A. Eventually. Of course, they hardly have an itemized account of it; they have money values; they could always get the items if they desired it.

Q. They know just what purchases were made, do they not? [182—134]

A. They have a record of all purchases.

Mr. SCHLESINGER.—That is all.

By Mr. MORRIS.—There is just one question I forgot to ask Mr. Spear, your Honor, that I recall.

Q. Officer Spear, is it not a fact that on many occasions during the time in question that is covered by this indictment, it was the custom of the Store-keeper to telephone to Seattle to the supplymen, and to write letters, or telegraph eastern people, when you wanted to know if a certain article could be supplied on short notice?

A. Are you through with the question?

Q. No. Go on.

A. Well, we used to obtain information as to the quantity of the material in the city, and also the prices.

Q. Also the prices. And that occurred on a great many occasions, both as to local people and to eastern people, by telegraphic communication, and so forth?

A. Oh, yes, that was a regular routine procedure.

Mr. MORRIS.—That is all.

On cross-examination the said witness testified as follows:

(By Mr. VANDERVEER.)

Q. Mr. Spear, the United States Navy required

(Testimony of Ray Spear.)

a broader range of steam engineering specialties than the commercial trade here, did it not?

A. Well, it is rather special material.

Q. Who carried the biggest line of steam engineering specialties in Seattle?

A. Well, we used to depend upon the largest wholesale [183—135] hardware houses here.

Mr. VANDERVEER.—Isn't it a fact that Mr. Corder carried the most complete line of specialties?

A. He had some. I really don't know what the extent of his stock was.

Mr. SCHLESINGER.—That was before he became bankrupt?

Mr. VANDERVEER.—At the time, yes.

Q. And you frequently called upon Mr. Corder to ascertain whether he had certain special articles that you couldn't secure elsewhere?

A. I understood that Mr. Corder at that time was a manufacturer agent for most of this material he was supplying.

Q. True, yes, but he had a lot of stock, didn't he?

A. I really don't know the extent of his stock; I don't believe I have ever been in his place.

Q. Mr. Morris *question* you about some difficulty that arose over a complaint that Mr. Meyer made to you about Mr. Corder. You referred that to the United States Navy Pay Office here in Seattle, did you not, Mr. Ryan then in charge?

A. There was correspondence between our office, yes.

Q. And then you referred it to the Chief Pay-

(Testimony of Ray Spear.)

master of the Navy at Washington?

A. I think that was the course of the correspondence.

Q. Now, there was nothing in that complaint involving any irregularity in Mr. Corder's bids, or any irregularity in his contract; it was over the delay in the delivery of his goods, was it not?

A. Well, I questioned the good faith of Mr. Corder on some of his time deliveries under which he undertook to make delivery. [184—136]

Q. Well, he didn't deliver within the time in which he had agreed to?

A. No, on that he was a specific offender, on the time of delivery. He would take a contract for five days and take his time in delivery. In other words, he thought we didn't mean five days when we said that we wanted an article in five days.

Q. It had nothing to do with any suspicion of dishonesty?

A. Oh, no, I had no suspicion of anything.

Q. And this was first laid before the office here, and then laid before the office at Washington, and your recommendations were not adopted at either place?

A. I don't remember really what action the Department did take.

Q. I will ask you if you recall the occasion when your office initiated a complaint over some clinker gauge-glasses that were furnished by Mr. Corder?

A. Yes, sir.

Q. And that matter was a subject of a good deal

(Testimony of Ray Spear.)

of correspondence between you and Mr. Corder in the beginning? A. Yes, sir.

Q. And subsequently and finally Mr. Corder wrote you a long letter, at the end of which he stated the matter should be laid before the head of the Steam Engineering Department at Washington?

A. Well, now, you are getting me down to a detail that I don't remember.

Q. You don't remember. You remember that that was not so, Mr. Spear? [185—137]

A. I don't remember that it was not so; no.

Q. You don't remember anything about it one way or the other?

A. I remember the difficulty we had over clinker gauge-glasses.

Q. You remember that finally, through the intervention or recommendation or action of the head of the Steam Engineering Department at Washington, his bill for those glasses was paid?

A. I think so; yes, sir.

Q. Can you recall any occasion, Mr. Spear, when Mr. Corder ever got the best of anything in your office?

A. No, I don't know. I don't believe I—

Mr. SCHLESINGER.—Did you ever hear of the Great Western Smelting & Refining Company?

Mr. ALLEN.—I object.

The COURT.—Objection sustained.

Mr. SCHLESINGER.—Exception.

Mr. VANDERVEER.—That is all.

(Testimony of Ray Spear.)

(By Mr. ALLEN.)

Mr. SCHLESINGER.—Do I understand, Mr. Allen, what you want is an agreement between us that either counsel may read over any part of this book?

Mr. ALLEN.—That is 1909.

Mr. SCHLESINGER.—Well, we will take the book of 1905, then.

Mr. ALLEN.—Yes, that is all right.

The COURT.—Exhibit “9” is 1905.

Mr. ALLEN.—Well, that is consented to. The whole of contents of requisition number “4,” we ask that be admitted in evidence. [186—138]

Mr. SCHLESINGER.—What is exhibit number “4”? (Referring to Blue Book of 1909.)

Mr. ALLEN.—We object to 1909.

Mr. SCHLESINGER.—As a matter of fact, the Court will take judicial notice of these regulations.

The COURT.—What is the objection to exhibit number “4”?

(No answer.)

It is admitted.

Mr. MORRIS.—Exhibit “4,” number of requisition 438.

The COURT.—Part of the Storekeeper’s Office.

Mr. SCHLESINGER.—Is this complete as to exhibit “4”?

Mr. ALLEN.—It should be; it was.

Mr. RIDDELL.—No, this isn’t “4.”

The COURT.—Well, you better look them over during noon recess.

(Testimony of Ray Spear.)

Cross-examination (Resumed).

Mr. SCHLESINGER.—Mr. Spear, I will show you a letter dated May 6th, 1908, and purporting to have been signed by you. Is that your signature (showing paper to witness)?

A. Yes, sir.

Q. Has that been signed by you in the usual course of your official duties?

A. I think so; I assume that it was, of course.

Q. And transmitted to the Commandant at the Navy Yard, Puget Sound, Washington?

A. Yes, sir.

Mr. SCHLESINGER.—Now, your Honor please, we offer in evidence this letter as a part of the cross-examination. I will ask you this primary question: Did that letter contain the true state of facts as you understood it to be [187—139] at that time?

A. I haven't read the letter yet; I would like to read it. This part, your Honor please, of the official files given to us by the Government officers (handing same to witness).

A. Yes, I think that was—

Q. That represents the true condition of affairs at that time?

Mr. ALLEN.—On inspection of this document, your Honor, I have no objection to this instrument being taken from the files in which it was found and offered as an exhibit in the case. It is defendants' exhibit, of course, but we would just as soon have it marked as plaintiff's.

The COURT.—If these documents are necessary

(Testimony of Ray Spear.)

to be preserved at the navy yard, perhaps copies had better be supplied.

Mr. SCHLESINGER.—To that we have no objection, your Honor.

Mr. ALLEN.—You Honor, I presume, with consent of counsel, if we want the originals of any of these we may supply copies?

Mr. SCHLESINGER.—There is no objection, Mr. Morris, to that.

Mr. MORRIS.—What is that?

Mr. SCHLESINGER.—The originals taken back and copies furnished. That will be the understanding.

The COURT.—Very well; proceed. Do I understand there is no objection to this being introduced?

Mr. SCHLESINGER.—No, sir. Navy Yard, Puget Sound, Washington, May 6th, 1908.

(Papers referred to and received in evidence and marked Defendants' Exhibit "C.")

Mr. SCHLESINGER.—“The General Storekeeper respectfully requests that the heads of departments expedite in every possible way the preparation of open purchase requisitions [188—140] for material for the battleship fleet requiring technical description and specifications. The time is now so short that it is imperative that these requisitions be in the hands of the Purchasing Pay Office at the earliest practical date. Very respectfully, Ray Spear, Paymaster U. S. N., General Storekeeper. Addressed to the Commandant Navy Yard, Puget Sound, Washington.”

(Testimony of Ray Spear.)

Q. Who was the Commandant referred to in that communication, Mr. Spear?

A. Admiral Burrell was in command of the yard at that time.

Q. And is he now in command?

A. Admiral Burwell is dead.

Mr. SCHLESINGER.—Now, Mr. Spear, I will call your attention to what purports to be a wireless telegram bearing date April 22d, 1908. Was that wireless telegram received at your office in due course of official business at or about the date it bears?

A. Well, that telegram was originated by me, sir, not received in my office.

Q. Well, was it sent by you? A. Yes, sir.

Q. In due course of official business?

A. It is taken in connection with that former exhibit; it is practically the same subject.

Q. And does it represent the condition of affairs as they then existed? A. Yes, sir.

Mr. ALLEN.—Let me see the telegram. (Examining same.) [189—141] We have no objection to that going in as their exhibit.

Mr. SCHLESINGER.—You sent that telegram, Mr. Spear, after being fully satisfied of the needs and requirements of the yard?

A. Yes,—well, I was in—

Q. You were in charge. This is a wireless telegram and is dated April 22d, 1908. “To Commander in Chief, Atlantic Fleet. It is noted the telegram of April 15th, Bureau of Construction and Repair, special order No. 67, in that the ‘Georgia,’ ‘New

(Testimony of Ray Spear.)

Jersey,' 'Rhode Island' and 'Virginia' will dock at Puget Sound instead of the 'Minnesota,' 'Ohio,' 'Missouri' and 'Calgoa.' A telegram from the Commander in Chief of the Atlantic Fleet states 'That vessels will take on stores at the yard to which they are assigned for docking. I respectfully state that some misunderstanding seems to exist, as the General Storekeeper has not received any requisition from the 'Virginia,' 'Georgia,' 'New Jersey' or 'Rhode Island,' while requisitions have been received from the 'Minnesota,' 'Missouri,' 'Ohio,' vessels that are not coming to the yard for docking. Information is requested as to whether or not the 'Virgina,' 'Rhode Island,' Georgia' and 'New Jersey' expect to receive their stores at this yard, and, if so, the requisition should be submitted immediately. Information is also desired as to whether we shall continue to assemble stores for the 'Ohio,' 'Minnesota' and 'Missouri.' ” In using the word “stores” in that wireless telegram had you in mind such articles as zinc needed for boilers?

A. Oh, it might have been included.

Q. And prior to sending this telegram had you expected to [190—142] receive requisitions from the “Virginia,” “Georgia,” “New Jersey” and “Rhode Island”? A. No, sir.

(Telegram referred to received and marked Defendants' Exhibit “D.”)

Q. Had you not expected to receive requisitions for those vessels?

(Testimony of Ray Spear.)

A. Just let me be sure of those ships that you named there.

Q. I think I have read them correctly, Mr. Spear.

A. No, we had not expected to furnish supplies to those particular vessels. We had expected to furnish supplies to the "Minnesota," "Ohio," "Missouri" and "Calgoa," vessels that were expected were coming to the yard.

Q. In other words, you had expected those vessels would reach the yard?

A. Yes, sir. As a matter of fact, they did not.

Q. As a matter of fact, they did not. But, to be upon the safe side, to see to it that there would be no shortage in the matter of supplies, you went to the trouble of sending this wireless telegram, did you not, Mr. Spear?

A. Yes, sir.

Q. I will call your attention to what purports to be another wireless telegram bearing date April 22d, 1908 (exhibiting same to witness). I will ask you whether or not, in the due course of your official duties, you sent that telegram on or about that date?

A. Yes, sir, we sent that.

Q. Did you send that telegram, Mr. Spear, after you had ascertained the condition of stores at your yard and the probable wants of the coming fleet?
[191—143]

A. Well, I didn't know the probable—well, I knew the probable wants, but I didn't know the actual want.

Q. And, acting upon that information, in your position you sent that telegram, did you not?

(Testimony of Ray Spear.)

A. Yes, sir.

Q. And that telegram represented to your mind the condition of affairs at the navy yard at that time with respect to stores? A. Yes, sir.

Q. I will now, gentlemen of the jury, read to you—

Mr. ALLEN.—Pardon me; I haven't even seen that. (Examining same.)

Mr. SCHLESINGER.—I now formally offer in evidence, your Honor please, a part of the officials' files, being the letter and telegram I have just read to the witness, practically the same thing.

The COURT.—That entire folder is in evidence?

Mr. ALLEN.—No, sir, that folder was offered for identification.

Mr. SCHLESINGER.—We will state now, Mr. Allen, that we haven't any objection to this entire folder, together with the contents, being admitted in evidence.

Mr. ALLEN.—There isn't any objection on our part, your Honor, except the fact it encumbers the record with a lot of useless matter.

Mr. SCHLESINGER.—I would like to have the jury get every possible—

The COURT.—Proceed. (Marked Defendants' Exhibit "E.")

Q. "U. S. Navy Wireless Telegram Service, Navy Yard, Puget Sound, Washington, April 22d, 1908. Commander in Chief, Atlantic Fleet, U. S. S. Connecticut. If 'Georgia,' 'New Jersey,' 'Rhode Island,' 'Virginia' expect to receive stores at this yard, [192—144] requisition for same should be

(Testimony of Ray Spear.)

submitted. Nothing received from above-mentioned vessels." Why, Mr. Spear, did you send that telegram to the Commander-in-Chief of the Atlantic Fleet?

A. For the reason that we had received information from the Bureau of Construction and Repair in Washington, I believe, information that these vessels were coming to the yard.

Q. Then that information that you had received came from your superior officials at Washington?

A. In a very peculiar roundabout way, yes, sir.

Q. Well, you ultimately received it in due course of official business? A. Yes, sir.

Q. And the purpose of that information was to enable you to gather sufficient supplies to supply the incoming fleet?

A. No, that wasn't the reason the information was given to us by Washington. It came to us rather inadvertently.

Q. What was the purpose of the information?

A. The information that we received from the Bureau of Construction and Repair had to do purely with the docking of the vessels, not with their supplies. The Bureau of Construction and Repair are not concerned with supplies.

Q. Now, Mr. Spear, in that same connection I will direct your attention to a wireless telegram, still another, dated May the 1st, 1908, and addressed to the Commander-in-Chief of the Atlantic Fleet. Do you recognize that telegram (exhibiting same to witness)?

(Testimony of Ray Spear.)

The COURT.—Defendants' Exhibit "F."

Mr. SCHLESINGER.—That was sent by your dictation? A. I imagine it was.

Q. And did it truly represent the condition of affairs at that [193—145] time? A. Yes, sir.

Mr. ALLEN.—Are you prepared to offer that in evidence?

Mr. SCHLESINGER.—Yes, sir.

The COURT.—I wish you would have the clerk mark them.

Mr. SCHLESINGER.—I have so identified them that I can easily determine them. I am trying to expedite the matter along.

Mr. ALLEN.—If it please the Court, if counsel will now state to me how many of these matters he wants to put in the record, why, it may help us.

Mr. SCHLESINGER.—This will be probably the last, Mr. Allen.

Mr. ALLEN.—That is of date May 1st, 1908?

Mr. SCHLESINGER.—Yes.

Mr. ALLEN.—I have no objection.

(Papers referred to received in evidence and marked Plaintiff's Exhibit "F.")

Mr. SCHLESINGER.—"Wireless telegram, May 1st, 1908. Commander-in-Chief of the United States Atlantic Fleet, U. S. S. Connecticut. Request that all requisitions of ships, second and fourth division, be forwarded to Puget Sound immediately. This also refers to closing requisitions."

Q. By the way, Mr. Spear, what was zinc used for by the Navy Department?

(Testimony of Ray Spear.)

Mr. ALLEN.—Now, your Honor, that has been gone over.

Mr. SCHLESINGER.—That has been gone into, that is true. Did you get the information contained in that telegram from the head of the Department of Equipment, Steam Engineering and Construction?

A. No.

Q. Well, I will call your attention, Mr. Spear—
[194—146]

A. You mean the subject I referred to in that telegram?

Q. Yes.

A. They couldn't possibly give me any information, except in a very small way.

Q. Well, you picked up information wherever you possibly could? A. Yes.

Q. And you were quite satisfied of the correctness of it at the time you sent the telegram?

A. Yes, sir.

Q. Mr. Spear, I would like to ask you a final question. Did you receive from the Department, from the Secretary of the Navy, or any other official in authority, any complaint as to alleged exorbitant or unconscionable profit with respect to this transaction? A. No, sir.

Q. Did not.

Mr. SCHLESINGER.—That is all.

Mr. ALLEN.—If it please the Court, because this matter came up at noon, we again offer our offer in evidence of certain exhibits which were merely identified, and which counsel reserved the right to ex-

(Testimony of Ray Spear.)

amine upon, calling your Honor's particular attention to exhibit "7," I believe.

The COURT.—What was that?

Mr. ALLEN.—"7," your Honor, is the folder 438.

The COURT.—What was that?

Mr. ALLEN.—Folder and contents. That is the particular matter in controversy, your Honor, that is the folder with its data.

The COURT.—Any objection? [195—147]

[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants, Edwin F. Meyer and Emar Goldberg. Vol. Pages 1 to 147. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 11, 1914. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy. [196]

Mr. ALLEN.—This is the folder, your Honor, found in the Navy Office in Seattle. Also that exhibit that is marked Plaintiff's Exhibit "15."

The COURT.—Any objection to number "7"? If not, it is admitted.

Mr. SCHLESINGER.—Your Honor, before making the order, these folders contain so many various documents, we would like to have a chance to examine each one separately.

The COURT.—It has been offered since yesterday.

Mr. ALLEN.—Your Honor, they have had ample time. That is admitted?

The COURT.—Yes.

(Papers referred to received in evidence and marked Plaintiff's Exhibit "7.")

(Testimony of Ray Spear.)

Mr. ALLEN.—We offer in evidence Plaintiff's Exhibit "15," yard folder.

The COURT.—That was admitted yesterday.

Mr. ALLEN.—And we offer "14," your Honor.

Mr. SCHLESINGER.—What is "14"?

The COURT.—Storekeeper's folder number 649.

Mr. ALLEN.—We are offering these two, then; they are admitted in evidence.

The CLERK.—How about number "11"?

Mr. ALLEN.—We have taken out of number "11" certain letters, and they have been especially admitted in evidence. We don't want the letter file in.

Mr. SCHLESINGER.—Do I understand the pending offer is for the admission of "14" in evidence?

The COURT.—"14."

Mr. SCHLESINGER.—We object to that on the ground the folder [197—148] and contents thereof are absolutely immaterial, incompetent, irrelevant and in no wise binding upon these defendants.

The COURT.—Overruled.

Mr. ALLEN.—That is the toban bronze matter, your Honor.

The COURT.—It will be admitted.

Mr. SCHLESINGER.—We take an exception.

(Papers referred to received in evidence and marked Plaintiff's Exhibit "14.")

Mr. ALLEN.—"15" is admitted?

The CLERK.—Not admitted.

Mr. ALLEN.—We offer in evidence Plaintiff's Exhibit "15."

(Testimony of Ray Spear.)

The COURT.—That was admitted in evidence yesterday.

Mr. SCHLESINGER.—I just want to look at it a moment, your Honor, if I may (examining same). We object to the introduction of exhibit “15” for identification in evidence, folder number 169, upon the ground that it is irrelevant, incompetent and immaterial; it has nothing to do with any of the issues involved in this case; it is too remote in point of time, and represents an entirely different transaction.

The COURT.—What is the matter in question?

Mr. SCHLESINGER.—Now, it is possible if the Court withdraw this temporarily we may let this go in; I don’t know; it may save time.

Mr. ALLEN.—Number “4,” your Honor, our records don’t show that has been admitted in evidence. That is 438.

The COURT.—That has not been admitted.

Mr. ALLEN.—We move the admission of that folder and contents.

The COURT.—What is that?

Mr. ALLEN.—That is the navy yard folder for the case in [198—149] chief, for the case in question.

Mr. SCHLESINGER.—You are offering now the entire folder, as I understand it?

Mr. ALLEN.—I am offering exhibit number “4,” not that (showing).

Mr. SCHLESINGER.—What are you offering that is contained in that folder, in folder exhibit number “4”?

(Testimony of Ray Spear.)

Mr. ALLEN.—I am offering the folder and its contents.

Mr. SCHLESINGER.—Are you not offering that check as part of its contents?

Mr. ALLEN.—No, that is already in.

Mr. SCHLESINGER.—If you tell me what you are offering, I will meet the objection, but I cannot meet the objection if you make—

Mr. ALLEN.—This was admitted in evidence without objection.

Mr. SCHLESINGER.—What *are offering* with respect to exhibit number “4,” what are you offering?

Mr. ALLEN.—We are offering the folder and contents, any memorandum in number “4,” with the contents and with the folder, in requisition number 438, the same being a part of the naval records kept in the Navy Yard of Puget Sound.

Mr. SCHLESINGER.—What do you claim the contents to be of that folder?

Mr. ALLEN.—Well, I would have to refresh my memory.

Mr. SCHLESINGER.—Then we are not prepared to make this argument at this time. I want to know what specific offer you make.

Mr. ALLEN.—For the information of counsel, and for the information of the Court, the contents as now offered is call for inspection of supplies on 438, which is the case in chief; [199—150] the Board of Inspection sets out and has the proper signature and proper stamp; and there is the bill, the Fowler

(Testimony of Ray Spear.)

Metal Company, and memorandum—are there any other matters?

Mr. SCHLESINGER.—There isn't any objection to that, if that is what you offer.

Mr. ALLEN.—And also, of course, that part of the folder which is attached, your Honor, that includes the offer, which is a copy of this requisition retained in the Navy Yard Office at Bremerton.

Mr. SCHLESINGER.—If you confine your offer to that particular matter in question we do not interpose any objection.

Mr. ALLEN.—If Mr. House could tell me whether or not there has been anything taken out of that folder—the instruments are all here. That is the offer. This contains everything that belongs in that folder (handing same to Mr. House)?

Mr. HOUSE.—(Examining same.) Yes.

Mr. ALLEN.—It contains, Mr. House says, all of it. We offer that in evidence, your Honor.

The COURT.—I understand there is no objection.

(Papers referred to received in evidence and marked Plaintiff's Exhibit "4.")

Mr. ALLEN.—We next call your attention, your Honor, to Plaintiff's Exhibit Number "7." Has that been admitted?

The CLERK.—You just admitted that a few minutes ago.

Mr. SCHLESINGER.—What have you just offered in evidence, please?

Mr. ALLEN.—Well, I have explained it to the Court.

(Testimony of Ray Spear.)

Mr. SCHLESINGER.—I know, but counsel is entitled to know.

The COURT.—Well, now, see here; you should remain here so we will not take time unnecessarily. Just repeat what [200—151] you offered here. You should have remained here and not unnecessarily consume the time of the Court.

Mr. ALLEN.—Now, in order that the record—your Honor, I understand the clerk's minutes show exhibit number "7," has been admitted in evidence, is that right?

The CLERK.—Just a few moments ago.

Mr. SCHLESINGER.—Now, I wish to ask a question for information. You have just made an offer of a certain document. What offer have you made? I will ask the reporter to read his notes.

Mr. ALLEN.—I will withdraw that offer as made. It is already made and admitted, but the offer was intended to include the folder and all the contents, including all those parts which are attached to the inside of the folder, together with all the notations as well.

The COURT.—Show it to counsel.

Mr. ALLEN.—Counsel has seen it.

Mr. SCHLESINGER.—So as to identify the contents of this folder which is now offered in evidence, I ask permission to read from each document so that the papers can be identified by this Court at some future time. Have you any objection to that course being pursued?

Mr. ALLEN.—I think the Court would take the

(Testimony of Ray Spear.)

same position in that matter I would; it is a useless waste of time.

The COURT.—Why, the documents are all marked by reference, I understand, the date and name.

Mr. SHIPLEY.—The folder is, but not the documents.

Mr. SCHLESINGER.—That is where the difficulty comes in.

The COURT.—Let the documents remain so they will not be confused. [201—152]

Mr. ALLEN.—Your Honor, I started out originally in my offer of evidence to do that very thing, and, after suggestion of both counsel and Court—

The COURT.—Just name these in the record.

Mr. ALLEN.—This particular exhibit is requisition number 438, including the folder and all of the contents, which are more specifically described as follows: The requisition, the copy of the requisition attached to the left-hand page on the inside of the folder; the order for the supplies of service attached to the right-hand side of the inside of the folder; the proposal for supplies or bids dated April 11, 1908, of the Fowler Metal Company, bearing certain stamps to the departments; also the proposal of the same date of the Fowler Metal Company, being a duplicate printed with the same name; the proposal of the Great Western Smelting & Refining Company, date of April 11, 1908; proposal of the American Iron & Metal Company of April 11, 1908; the proposal of P. McManus, dated April 11, 1908; the proposal

(Testimony of Ray Spear.)

of P. McManus, apparently a duplicate, of April 11, 1908; the proposal of W. A. Corder & Company, April 11, 1908, signed W. A. Corder & Company; W. A. Corder Company, apparently a duplicate, April 11, 1908; Pacific Engineering Company, dated April 11, 1908, signed Pacific Engineering Company; a proposal of the same date, April 11, 1908, with the name Pacific Engineering Company at the top, but not endorsed at the bottom; the proposal of April 11, 1908, of Schwabacher Hardware, not signed at the bottom; proposal of Schwabacher Company not signed at the bottom, of April 11, 1908; proposal of Puget Sound Machinery Depot; [202—153] proposal of April 11, 1908, with no signature at the bottom; a proposal of Seattle Hardware Company, April 11, 1908; proposal of Seattle Hardware Company, April 11, 1908, with no signature attached; proposal of the Hallidie Machinery Company, April 11, 1908, "No bid," signed at the bottom; proposal of Hallidie Machinery Company, April 11, 1908, with no signature at the bottom. I mention also the loose copy of the requisition, memorandum copy number 2, being requisition for 50,000 pounds of zinc for the sum of \$6,250, with appropriate stamps thereon.

Mr. SCHLESINGER.—To the offer of counsel for the Government for the introduction in evidence of paper bearing the caption, Fowler Metal Company, and dated April 11, 1908, we object upon the ground that the same is irrelevant, immaterial, incompetent and no wise binding upon the defendant, and is not included as an overt act in this indictment.

(Testimony of Ray Spear.)

The COURT.—Overruled.

Mr. SCHLESINGER.—We make the same objection to the paper dated April 11, 1908, in the name of the Fowler Metal Company.

The COURT.—Same ruling.

Mr. SCHLESINGER.—We make the same objection to the one dated April 11, 1908, in the name of the Great Western Smelting Company.

The COURT.—Same ruling.

Mr. SCHLESINGER.—Same objection with respect to the American Iron & Metal Company bearing the same date.

The COURT.—Same ruling.

Mr. SCHLESINGER.—April 11, 1908, in the name of P. McManus, [203—154] same objection.

The COURT.—Same ruling.

Mr. SCHLESINGER.—And the one immediately following in the same name and of the same date.

The COURT.—Same ruling.

Mr. SCHLESINGER.—W. A. Corder & Company, same objection.

The COURT.—Same ruling.

Mr. SCHLESINGER.—And all of the succeeding papers without specifying them by name.

The COURT.—Same ruling and an exception noted to each ruling.

Mr. ALLEN.—That, I believe, your Honor, includes all the instruments which were offered for identification.

The COURT.—Is there any objection to this?

(Testimony of Ray Spear.)

Mr. ALLEN.—That was admitted by consent of counsel.

Mr. SCHLESINGER.—Now, your Honor, I know no stipulation of counsel will be repudiated. It is not my recollection any of those documents have been admitted. The offer was made for the admission of a certain folder, together with the contents, but the contents of the folder has not been examined any more than were the contents of this particular folder, and I think if there is any doubt about that, counsel ought to make his offer and let the Court reserve the ruling upon it, unless you are satisfied with the record as you make it.

Mr. ALLEN.—I will ask Mr. Crosby, does the record show that was admitted in evidence?

The CLERK.—“5” was admitted.

Mr. ALLEN.—Was number “5” admitted in evidence?

The CLERK.—Yes, sir, number “5” is admitted.
[204—155]

Mr. ALLEN.—The record of the Court, your Honor, shows number “5” is admitted.

The CLERK.—Yes, sir.

Mr. RIDDELL.—“4,” “7,” and “15” just went in.

The CLERK.—“4,” “7,” “14” and “15.”

On redirect examination the witness testified as follows:

(By Mr. ALLEN.)

Q. Mr. Spear, in answer to a question propounded to you by Mr. Morris, you stated that ten per cent of excess delivery was ordinarily permitted on any

(Testimony of Ray Spear.)

award made for the purchase of supplies for material of this character for the United States Government.

A. Yes, sir; we tried to confine it within ten per cent.

Q. Was that based upon some ruling of the department, or was that a general order which obligated you to follow?

Mr. SCHLESINGER.—If there is such a ruling we ask the ruling be produced.

Mr. ALLEN.—Upon what was the custom of the Department, or or the habit of the Department, based?

Mr. SCHLESINGER.—One moment. We object to that.

Mr. ALLEN.—Upon what was the action of your office with reference to bids, where an excess delivery in excess of ten per cent had been delivered, in the case of a rejection of any such award, what was the reason for your rejection, why would you do that?

A. In case of a delivery—that is, now, I am giving this as a general rule, no specific case, any excess of ten per cent over delivery, the contractor was usually informed that the material was on the yard subject to his orders. Our action depended [205—156] a great deal on the character of the material.

Q. You may explain what you mean by that.

A. Well, for instance, we might call for 50,000 pounds of bar metal, giving you that as an example, and it might be very heavy sizes, very large sizes, and the weight of any several pieces, or any number of it, might be excessive, we couldn't confine the con-

(Testimony of Ray Spear.)

tractor to a delivery of exactly 50,000 pounds. He might deliver 53,000 pounds on account of being obliged to cut, and that was considered perfectly legitimate to make a delivery of that sort.

Q. You have seen, Paymaster, boiler zinc of the size 12 by 6 by $\frac{1}{2}$ inch, have you not? A. Yes, sir.

Q. What is the approximate weight of one of those small pieces of zinc?

A. Oh, I should say between ten and fifteen pounds.

Q. Ten and fifteen pounds. If a requisition were made for 50,000 pounds of zinc for delivery at the yard, and they delivered 59,000 and some odd pounds, would that be, under your rule, an excess delivery?

A. Yes, sir, that would be considered going rather strong.

Q. Paymaster, if a requisition for toban bronze—incidentally, explain to the jury what toban bronze is.

A. Toban bronze is a metal containing a large percentage of copper, some nickel and tin. It is used where salt water comes in contact with metal; in other words, salt water has very little action on toban bronze.

Q. Recalling to your memory, the requisition yesterday offered in evidence, a certain kind of toban bronze pipe, was it not?

A. I believe those were rods; they are solid rods.
[206—157]

Q. Solid rods. If a requisition were made for the delivery of 775 pounds of toban bronze rods of the character described in that requisition, the toban

(Testimony of Ray Spear.)

bronze requisition shown to you yesterday, and the contractor really delivered 1497 $\frac{1}{4}$ pounds of toban bronze, which is probably a hundred per cent in excess of the original award, would you consider that an excess delivery? A. Most decidedly.

Q. You had some questions propounded to you by Mr. Morris with reference to what persons or individuals connected with the Navy Yard at Bremer-ton would initiate requisitions from time to time, and I believe you stated, in answer to his inquiry, that only requisitions could be initiated by departments where they had no material of that kind in your storehouse; is that true?

A. Yes, sir, or sufficient material in store.

Q. In other words, if you had in your warehouse, Paymaster, 52,000 pounds of zinc plate of size 12 by 6 by $\frac{1}{2}$ inch, would any department in the navy yard have any power or right to initiate a requisition for plate of that kind with that lying in your warehouse?

Mr. SCHLESINGER.—I object to that as calling for an opinion of the witness.

The COURT.—Objection overruled. He may answer.

Mr. SCHLESINGER.—Exception.

A. If they had information before them of a very large demand in their own department they might suggest that a requisition be put through. They are, under the regulations, supposed to advise us whenever an excessive demand or an unusual demand is in sight in their own particular department. [207—158]

(Testimony of Ray Spear.)

Q. No one in the yard could have originated requisition number 438 for 50,000 pounds of zinc for delivery at the navy yard but Mr. Meyer, your principal clerk; is that true?

A. That is, for stock. No, sir, that would be from our office.

Q. Your attention is called, Paymaster, to the question of the time, the element of time in the delivery of zinc made to the yard about March 18th, 1908, or a matter of two weeks prior to the initiation of this new requisition for 50,000 pounds, and which, under the old delivery, there had already been delivered to you on March 18th, 50,000 pounds of the same material from a place in Illinois. You stated, in answer to the query directed to you, that that requisition was originally started in Washington about the month of December. Will you, from an examination of the files of that, unless you can do it from memory, tell how much of that time was occupied in the details incident to the way they do business sometimes in Washington and how much was actually occupied in the delivery of the material from the house in Illinois?

A. Well, the notice of award here shows that that requisition of December was not actually awarded until February the 4th, 1908, and it was delivered on March 18th.

Q. So a matter of—there is nothing there in the record to show when the zinc actually started on its way? A. There is a bill of lading here.

Mr. MORRIS.—Mr. Allen, may I ask a question?

(Testimony of Ray Spear.)

Mr. ALLEN.—You may when I get through.

Mr. MORRIS.—Right here on this question. There is a—

A. Yes, there is a paper here that purports to be a bill of lading, showing it was billed out of La Salle, Illinois, on [208—159] February 20th, 1908.

Mr. ALLEN.—And it reached the navy yard at what time?

A. The inspection call shows that it reached the navy yard on March 7th.

Mr. ALLEN.—Your attention, Mr. Spear, has been called to the stock card which is in the hands of the Department presided over by Mr. Lockwood, which is offered in evidence as Plaintiff's Exhibit Number "8." I call your attention to that card and ask you what the endorsement on the bottom "Limit of stock, 4,000 pounds, make requisition," what that means, as a matter of fact.

A. This is the storeman's indication, or rather it is practically its instructions to the storeman that whenever his stock of this particular item gets down to 4,000 pounds he is to make a request on the requisition clerk in the main office for more stock.

Q. In other words, 4,000 was a minimum, and if you had 52,000 pounds on hand at that date you would have what you ordinarily consider a considerable supply; isn't that true?

A. Yes, sir; that would be considered a very good supply.

Q. Calling your attention to that part of the card which has reference to the quantity supplied to dif-

(Testimony of Ray Spear.)

ferent battleships of the Atlantic Squadron, tell me, Mr. Spear, just what ships of the Atlantic Squadron were supplied with zinc plate, and the amount supplied to each.

A. The first ship here, the "Nebraska," which did, a week or two later, join the Atlantic Fleet—

Q. I am asking, pardon me, about those ships of the Atlantic Fleet; the "Nebraska" was explained the other day; I am asking about those ships which technically belong to the Atlantic Fleet. [209—160]

A. The "Kiersarge" drew 1500 pounds; the "New Jersey" drew 2,970 pounds.

Q. The "New Jersey" drew 2,970 pounds. All right.

A. Yes, sir. The "Rhode Island" drew 2,080 pounds.

Q. 2,080 pounds.

A. The "New Jersey" again drew 2,080 pounds.

Q. 2,080 pounds, "New Jersey."

A. The "Kiersarge" took 1,000 pounds again.

Q. "Kiersarge" a thousand.

A. The "Kiersarge" again 2,000.

A. That is all I find here.

Q. Calling your attention to the two ships, the "Washington" and the "Georgia," were they also attached to the Atlantic Battleship Squadron?

A. The "Washington" was the Pacific Fleet, the "Georgia" was attached to the Atlantic Fleet.

Q. The "Georgia" was attached to the Atlantic Squadron. How about the "Wisconsin," Paymaster?

(Testimony of Ray Spear.)

A. Up to the time of the Fleet's departure the "Wisconsin" had been assigned—she was assigned just as the Fleet left.

Q. Can you compute for the jury the aggregate amount of zinc taken by the Atlantic Battleship Squadron? A. I can.

Mr. SCHLESINGER.—We object to that, your Honor, please, as not being in any wise material or binding upon the defendant. The question is not how much they actually took, but how much it was thought they probably would require, that is the point in this case, not how much they actually consumed, and therefore we make this objection.

The COURT.—Let him answer. Objection overruled. [210—161]

Mr. SCHLESINGER.—Exception.

A. I said I can, yes, from this card.

Mr. ALLEN.—Will you do that for the jury, please? I will get you a piece of paper.

A. Do you wish me to exclude that amount of the "Nebraska"? She had not been assigned the time she drew this.

Q. She had not been assigned that time?

A. No, sir.

Q. She was not included in the Atlantic Battleship Squadron that time? A. No, sir.

Q. Well, take only the Atlantic Battleship Squadron. She hadn't been assigned then; as a matter of fact, they didn't know it then?

Mr. MORRIS.—How do you know they didn't know it?

(Testimony of Ray Spear.)

The COURT.—Proceed.

Mr. ALLEN.—Can you state, Paymaster, the total quantity of zinc of $\frac{1}{2}$ inch by 6 by 12 which was furnished to the ships of the Atlantic Battleship Squadron? A. Yes, sir.

Q. What is that total amount?

A. The total is 12,080 pounds.

Q. Twelve thousand and eighty pounds. Your Honor, just a moment; I have lost a memorandum here.

The COURT.—Is that all of this witness?

Mr. ALLEN.—Just a moment. I lost a memorandum.

Q. An inquiry was directed to you yesterday by Mr. Morris with reference to the filing system which you inaugurated in the navy yard after this occurrence. Tell the jury why you put that filing system in the navy yard. [211—162]

A. When I reported there on the 2d day of January, 1908, I found the filing records, particularly was it with reference to correspondence and classification of material, there had been some attempt to keep some sort of a classification, but it was not up to date, and I found that Mr. Meyer was keeping most of the transactions in his head. He was very accurate about it and did it very well, but the fact remained that if a stranger should drop in there, or Mr. Meyer dropped dead, the office records would have been very incomplete.

Q. That was the reason for the inauguration of the filing system you speak of? A. Yes, sir.

(Testimony of Ray Spear.)

Q. Do you know, as a matter of fact, Mr. Spear, whether any supply house on the Pacific Coast carried any stock of zinc plate of this particular kind and character, 12 by 6 by $\frac{1}{2}$ inch, in the sum of 50,000 pounds?

Mr. SCHLESINGER.—That is, of your own knowledge, Mr. Spear.

Mr. MORRIS.—Answer it yes or no.

Mr. VANDERVEER.—It is immaterial whether any house did or not. It could be supplied in a dozen smaller orders, filled by smaller orders and smaller lots until the whole of it was made up.

Mr. SCHLESINGER.—My objection is the witness is not supposed to know whether or not houses had metal at hand at that time, unless it is shown he had personal knowledge acquired by personal inspection. That is our objection.

The COURT.—He may answer the question as to the knowledge he received.

Mr. SCHLESINGER.—If he knows.

Mr. SCHLESINGER.—Exception. [212—163]

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

A. My recollection is—

Mr. MORRIS.—We submit he answer yes or no.

Mr. SCHLESINGER.—Whether you know.

A. They did not usually have that quantity of material on hand.

Q. (Question repeated.)

The COURT.—He may answer.

(Testimony of Ray Spear.)

A. They usually did not have that quantity on hand.

Mr. SHIPLEY.—I object as not responsive to the question.

Mr. MORRIS.—We move to strike the answer, your Honor please.

Mr. SHIPLEY.—The question is as to his knowledge.

The COURT.—Proceed.

Mr. SHIPLEY.—Exception.

Mr. ALLEN.—You were in the market, and were down at Mare Island as Paymaster of the United States Navy, you were purchasing all kinds of supplies, were you not? A. Yes, sir.

Q. It was the business of you and your office to ascertain the quantity and the kind of the material that could be had, in case you wanted it, isn't that true? A. Yes, sir.

Mr. MORRIS.—Your Honor please, I move to strike the answer of the witness to the previous question from the record.

The COURT.—I already denied it. It is in the record.

Mr. MORRIS.—Exception.

Mr. ALLEN.—From your experience as an officer in the navy, if a requisition came to you from any other office for a delivery within five or fifteen days for the furnishing of [213—164] a large quantity of such zinc plate, 50,000 pounds in quantity, and that award was made on the 15th day of April, 1908, and the material was actually delivered on May 9th,

(Testimony of Ray Spear.)

1908, for use in the latter part of May in the same year, there couldn't have been any particular reason, could there, from your experience as a Paymaster, in limiting the time of delivery from five to fifteen days.

Mr. KERR.—I object as argumentative.

The COURT.—Objection sustained. That is for the jury to draw from the testimony in the case.

Mr. ALLEN.—Do you know, Mr. Spear, of any reason, if this material should be used for the Atlantic Battleship Squadron, to arrive, as you knew in the office at that time, in the latter part of May, 1908, do you know of any reason, from your experience as a Paymaster, why the period of delivery should be limited to five short days, or even fifteen days?

Mr. SCHLESINGER.—Object as calling for the opinion of the witness and asking for his opinion.

The COURT.—He may answer.

Mr. SCHLESINGER.—Exception.

A. I do not recall at this time why the time of delivery was short in this particular case.

Mr. ALLEN.—Do you know of any reason?

Mr. SCHLESINGER.—I object as incompetent, irrelevant and immaterial.

A. The question isn't proper.

Mr. ALLEN.—Mr. Spear, for a number of days or weeks prior to April 1st, 1908, you contemplated the arrival of the Atlantic Battleship Squadron; as a matter of fact, Mr. Spear, I believe you testified on direct examination on the point, as [214—165] a matter of fact you knew with some certainty way along in January about the time the fleet would ar-

(Testimony of Ray Spear.)

rive in Seattle, did you not, approximately the time?

A. Approximately, yes, sir.

Q. And you were preparing then, from January, continuously through down to the date the fleet arrived in Seattle; isn't that true? A. Yes, sir.

Q. Covering a period of January, February, March, April, May and the latter part of May?

A. Yes, sir.

Mr. ALLEN.—I think, your Honor, that is all.

On recross-examination the witness testified as follows:

(By Mr. SCHLESINGER.)

Q. Mr. Spear, you don't know how much metal or zinc this Illinois concern had on hand between April and May of 1908, do you? A. No, sir.

Q. Now, do you know, from personal inspection or examination, how much zinc any other concern dealing in metal had on hand between the first day of February, 1908, and the first day of May, 1908, from personal inspection? A. Well, the fact remains—

Q. Would you please answer my question, Mr. Spear, if you can?

A. I have made no examination of their warehouses. I know that we were unable to obtain from local dealers metal in that quantity. For that reason, as a rule, they were advertised in Washington.

Q. Do you know what efforts the Department at Washington made [215—166] to obtain this material for a second requisition, if any?

A. No, sir; they didn't make any. They left that to the Purchasing Pay Office at Seattle.

(Testimony of Ray Spear.)

Q. Do you know whether or not any official of the Department in Washington made any effort to obtain the same material from this same Illinois factory? A. No, sir, I do not.

Q. You do not. That is all.

[Testimony of George Edward Lockwood, for Plaintiff.]

GEORGE EDWARD LOCKWOOD, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

My full name is George Edward Lockwood. I live at Bremerton. I am storeman in the metal storehouse over there at the Puget Sound Navy Yard. I know the defendant Meyer. He came to the yard before I did. I started to work in that department in the first part of April, 1906, I think it was. Mr. Meyer was Chief Clerk in Mr. Spear's office. I think there was probably ten or twelve clerks, something like that; all white men; there were probably twelve or fifteen laborers and packers all told. In my position as storeman there in the metal warehouse, I handled that stock of zinc plates. I know what Plaintiff's Exhibit "8" is. I recognize this card, all right. It is the stock card for 1½ by 6 by 12 zinc plates in the storehouse. On that stock card I would put down metal when it came in and as the metal went out of the office I would debit it against the card. [216—167] That is the original record on that card.

(Testimony of George Edward Lockwood.)

Q. Now, look on that card, and that shows that on the 2d of April, 1908, you had on hand how much metal, how many pounds of $\frac{1}{2}$ by 6 by 12 zinc plates.

A. What date?

Q. The 2d of April; take the 1st of April.

A. Well, that date doesn't—yes, the 2d of April we had 54,337 pounds on hand.

Q. Now, the last date before that is what?

A. Last date before that is March the 18th.

Q. And you had how much on hand?

A. 52,404 pounds.

Q. 52,404 pounds? A. Yes, sir.

Q. Now, you were in charge of the warehouse at the time you had that 52,000 pounds on hand?

A. Yes, sir.

Q. Now, you next received how much?

A. We received—next receipt was 1,933 pounds.

Q. When? A. The 2d day of April.

Q. On the 2d day of April, 1908. Did you originate the requisition on which that 1,900 pounds came in there?

Mr. MORRIS.—We object to that. It is taken for granted this witness had no authority to originate any requisition.

Mr. RIDDELL.—Mr. Meyer was the Chief Clerk at the navy yard at that time in the Storekeeper's office at that time? A. Yes, sir.

Q. And did Mr. Meyer ever come around the metal warehouse?

A. Yes, he came around quite frequently. [217—168]

(Testimony of George Edward Lockwood.)

Q. Did he ever examine the card?

A. Well, he did on some occasions.

Q. You have seen him, have you? A. Yes, sir.

Q. Now, tell the jury when the stock of zinc in the storehouse, in that metal storehouse would run low; tell the jury who would be the first man to be notified of it.

A. Why, it was customary to notify Mr. Meyer at that time.

Q. Who would notify him?

A. Well, I would notify him if anyone did, if he didn't look after it himself.

Q. Now, did you, having that 52,000 pounds on hand, did you notify him to start a requisition for that 1,900 pounds? A. No, sir.

Q. Now, what is the first expenditure against that zinc after the second day of April?

A. The first expenditure was made on the 13th day of April, 2,000 pounds issued to the cruiser "Washington."

Q. Now, Mr. Lockwood, just explain to the jury under what circumstances those charges, those expenditures would be noted on the card.

A. Well, the ship requiring these zincs would make what we call a requisition. That requisition would come through the General Storekeeper's office, and would come down to the storeman in due time, and the storeman would take that and issue the amount of zinc called for on the requisition, and make an entry showing the date, the name of the ship and the number of the requisition and the quantity issued.

(Testimony of George Edward Lockwood.)

Q. On this card?

A. On this card; yes, sir. [218—169]

Q. Suppose, now, that the ship wasn't in the harbor at that time, supposing the ship wasn't at the yard at that time when that requisition came in, what was done?

A. We would take the very same procedure. We would simply set the goods aside, assemble the goods and let them there until the ship arrived and called for them.

Q. Would you charge them at that time against the card? A. Yes, sir.

Q. How soon after the ship's requisition reached the yard was it charged against that card?

A. Well, in most every case I would charge it against the card the same day that I received the requisition, although the requisition might have been in the General Storekeeper's office three or four days, or weeks, before I would get it.

Q. It couldn't be over a week, though?

A. Well, I don't think it would be; that would be my idea.

Q. That was on the 13th of April? A. Yes, sir.

Q. The next charge is on the 18th of April to the "Nebraska," I believe? A. Yes, sir.

Q. And on the 20th of April to the "California"?

A. Yes, sir.

Q. And the 25th to the "Colorado"?

A. Yes, sir.

Q. On the 30th to the "St. Louis"? A. Yes, sir.

Q. Now, then, on the 7th of May there is a charge

(Testimony of George Edward Lockwood.)

there of 1,500 pounds to the "Kearsarge"? [219—169½] A. Yes, sir.

Q. Besides these vessels in the Pacific Squadron that I have named there, was any requisition received, according to that record, for ½ by 6 by 12 zincs for the Atlantic Battleship Squadron until the 7th of May?

A. No, I hadn't received no requisition. The first requisition that I received for any of the ships of the Atlantic Squadron was the 7th day of May.

Q. When the "Kearsarge" took 1,500 pounds?

A. Yes, sir.

Q. What is the date of the first entry on that stock card, Mr. Lockwood?

A. The first entry? Well, the first entry on the stock card is December 30th, 1907.

Q. December 30th, 1907. Now, on March 12, 1908, you got 50,158 pounds in stock. A. Sir?

Q. On March 12th, 1908, you got 50,158 pounds in stock? A. Yes, we received that.

Q. You received that?

A. Had some on hand at that time.

Q. On March 12th you received that? Now, after you received that 50,000 pounds did you make any requisition, or did you notify Mr. Meyer that the amount of 38,087 pounds, or any other amount, was needed by you? A. No, sir.

Q. After the receipt of that 50,000 pounds you recall the conditions of the yard at that time, do you, Mr. Lockwood? A. Of this receipt in March?

(Testimony of George Edward Lockwood.)

Q. Yes, after the receipt of that 50,000 pounds in March. [220—170]

A. Well, of course, we knew at that time that the Atlantic Fleet was coming around, and, of course, we thought naturally that we would probably need considerable boiler zinc, just the same as we would need other stock.

Mr. MORRIS.—What is that answer? Repeat it.

A. I say, at that time, at the time we received this 50,158 pounds, we knew that the Atlantic Fleet was coming around, would be there some time in the summer, and, of course, we knew we would require a big amount of stock of all kinds, as a matter of fact, to supply the ships.

Mr. RIDDELL.—Now, at that time, Mr. Lockwood, was the amount of 3,000 or 4,000 or 5,000 pounds a sufficient amount to supply your needs as you knew at that time?

Mr. MORRIS.—We object to that question as being incompetent and immaterial, what the supplies were then. They were preparing for the future, anticipating the future.

The COURT.—He may answer the question. Proceed.

Mr. MORRIS.—Exception.

Mr. RIDDELL.—From what you knew at that time would an amount of 3,000 or 4,000 or 5,000 pounds had filled that emergency for the battleship fleet?

A. No, sir, I wouldn't consider that it would.

Q. Well, could it have been considered that it

(Testimony of George Edward Lockwood.)

would under those circumstances?

Mr. SCHLESINGER.—That is asking for an opinion of this witness, your Honor please, as to what might have been required as to future conditions, and object to it.

The COURT.—He may answer the question.

Mr. SCHLESINGER.—Exception.

Mr. RIDDELL.—There were eight ships of the battleship fleet [221—171] at dock at that yard?

A. I think there were something like sixteen.

Q. Could an amount of 5,000 pounds of zinc, three or four or 5,000 pounds of zinc, been enough for those sixteen vessels?

Mr. SCHLESINGER.—Your Honor please, our objection goes to that. How could this witness have known until the arrival of the battleships how much they actually would take? This was an order in anticipation of requisitions.

The COURT.—This is purely his opinion based upon his experience in the yard there.

Mr. KERR.—They never had a fleet here before. It was extraordinary.

The COURT.—Proceed.

Mr. SCHLESINGER.—Exception.

Mr. RIDDELL.—Could that amount have been sufficient? A. No, sir.

Mr. MORRIS.—The Court has sustained an objection.

The COURT.—No, I haven't. I said he may answer. I said this is simply asking him for his opinion based upon his experience there.

(Testimony of George Edward Lockwood.)

Mr. MORRIS.—We will object to this witness' opinion.

The COURT.—It is already so ruled and the objection is already in the record.

Mr. MORRIS.—Well, there is one reason I want to state.

The COURT.—Proceed.

Mr. MORRIS.—For the reason he is not here as an expert. It is apparent he has no knowledge on these particular matters, and therefore his opinion is entirely irrelevant, incompetent and immaterial.

The COURT.—Overruled. Note an exception. Proceed. [222—172]

Mr. RIDDELL.—From the conditions as they were known to you and to Mr. Meyer in the yard at that time, could any such amount as 3,000 or 4,000 or 5,000 pounds of 1½ by 6 by 12 zinc have been sufficient? A. No, sir.

Mr. SCHLESINGER.—Our objection to that is it is not what the conditions were when the vessels were in dock.

The COURT.—I don't care for any argument upon this.

Mr. SCHLESINGER.—Our objection to this is it calls for a conclusion of the witness as to what was in Mr. Meyer's mind at that time.

The COURT.—I said, gentlemen, I didn't care about any argument. I say, this witness could not possibly have known what was in Mr. Meyer's mind. Objection sustained to the question last propounded.

Mr. RIDDELL.—Now, your Honor, may I tell the

(Testimony of George Edward Lockwood.)

Court the purpose of this inquiry?

The COURT.—Propound another inquiry.

Mr. RIDDELL.—I want to show the Court the purpose of this inquiry as to Mr. Meyer's mind. It is not as to what was in Mr. Meyer's mind; it is as to Mr. Meyer's knowledge at that time.

The COURT.—I don't care for any argument. I say, the objection is sustained because he couldn't read Mr. Meyer's mind, but he can testify as to what conditions are.

Mr. RIDDELL.—Mr. Lockwood, I will put the question to you this way, now, and hope we may get through with it.

Q. From the conditions as they existed in the yard at that time, as they were generally known to be in the storekeeper's office, could such an amount as 3,000 or 4,000 or 5,000 pounds [223—173] of 1½ by 6 by 12 zinc been sufficient for this Atlantic Battleship Squadron? A. I have answered that question no.

Q. Did Mr. Meyer ever have any conversation with you, Mr. Lockwood, about the weights of material to the contractors?

A. Well, that question did come up a few times there.

Q. Just tell the jury the circumstances.

A. Well, there was times there when material came in, when we received new stock. It was my duty to assist the inspector—

Q. I mean in the year 1908?

A. Well, that is what I am trying to do. It was my duty to assist the inspector in weighing up and

(Testimony of George Edward Lockwood.)

checking up all material, to see we had the material that the Inspection *Call* for, and to see that we had the proper quantities. And, of course, there was times that we found shortages, the contractor would ship a certain lot of stock whatever it might be, we would weigh it up or check it up, whatever it might be, and we would find a shortage, he hadn't sent the amount that he claimed. Well, of course, the inspector would report a shortage, and, of course, that caused an argument a great many times, and Mr. Meyer spoke to me a few times in regards to the weight, and he told me that he thought that the contractor's weights were right, the fact they had their scales tested and were weighed by competent men, and that he thought our scales were wrong. That is about the extent of that, as well as I remember.

Q. You remember the names of any of the contractors?

A. Well, I remember one occasion where there was a shortage, there was quite a little argument about it. That was shipment [224—174] of what we call inga tin. That was furnished, I think, by the Great Western Smelting & Refining Company.

Q. Did anybody come over to your yard afterwards from the Great Western?

A. Yes, sir, a representative came over and we re-weighed this particular shipment.

Q. Did you ever get any excess deliveries?

A. Yes, we got excess deliveries.

Mr. MORRIS.—Object as incompetent, irrelevant

(Testimony of George Edward Lockwood.)

and immaterial, and it isn't shown it has any bearing on this case.

Mr. RIDDELL.—All right, I will put it this way:

Q. Did you ever get any excess deliveries from the Great Western Smelting & Refining Company in 1908?

Mr. SCHLESINGER.—We object as immaterial, incompetent and irrelevant.

The COURT.—He may answer.

Mr. SCHLESINGER.—Exception.

A. We did.

Mr. RIDDELL.—Do you know how often?

Mr. SCHLESINGER.—We object to that as immaterial.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

A. Why, we got excess deliveries on two or three different occasions, as well as I can remember now. That is quite a while ago, and, of course, some things that I have forgotten.

Mr. RIDDELL.—Mr. Lockwood, at the time that this 59,575 pounds of zinc came into the storehouse, into your storeroom, did you know that that zinc was coming?

A. No, sir.

Q. At the time that the zinc was ordered, on the first of April, [225—175] 1908, was any fact known generally throughout the yard, or was there any fact within your knowledge at that time, which would require that that zinc should be furnished on fifteen day delivery?

Mr. MORRIS.—I object to the question on the

(Testimony of George Edward Lockwood.)

ground it is irrelevant, it is immaterial and it is incompetent, and it does not tend to prove or disprove any issues involved in this proceeding. The question calls for an opinion of this witness.

The COURT.—This witness has hardly placed himself in a position to testify to a conclusion in a way in which it is sought. I think the objection should be sustained.

Mr. RIDDELL.—Very well, your Honor.

Q. Mr. Lockwood, you were in charge of the storehouse at that time? A. Yes, sir.

Q. You had charge of the supply—you were the storeman over the supply of $1\frac{1}{2}$ by 6 by 12 zincs?

A. Yes, sir.

Q. At that time were you in possession of the general information which was current in the yard as to the necessities for the supply of an amount of zinc so great as 59,000 pounds.

Mr. SCHLESINGER.—We object to that.

Mr. RIDDELL.—That is preliminary.

The COURT.—Yes or no.

Mr. SCHLESINGER.—Exception.

Mr. RIDDELL.—Were you in possession of facts from general knowledge around the yard as to the necessity for an amount of zinc such as 59,000 pounds? Just answer yes or no.

A. No, sir. [226—176]

Mr. RIDDELL.—Did you have at that time in the yard, or at that time did you know in the yard of any call that would be made for 59,000 pounds of zinc

(Testimony of George Edward Lockwood.)

calling for a fifteen day delivery?

A. No, sir.

On cross-examination the said witness testified as follows:

(By Mr. SCHLESINGER.)

Q. Mr. Lockwood, you have stated to these gentlemen that at times there were excessive deliveries. Is it not also true that at times there were shortages?

A. Why, yes, there is times that we had shortages.

Q. And isn't that true with respect to the deliveries from a large number of concerns, different people?

A. Well, yes, that happened, of course, with different firms.

Q. In other words, you didn't draw any improper evidence because there happened to be an excess in deliveries, nor did you draw any improper inference because there happened to be a shortage in the matter of deliveries?

A. I took notice to an excess delivery where there was a great deal more delivered than the requisition called for.

Q. What was done with the excess in cases of that character?

A. Well, in some cases they were accepted and other cases they were rejected for the time, and probably later a new requisition would be made out, or they would be accepted in some way.

Q. In other words, they were either accepted or rejected just as the conditions demanded?

A. Yes, sir. [227—177]

(Testimony of George Edward Lockwood.)

Q. Did you, before the arrival of the fleet at this port, were you notified by any of the commanding officers of those vessels how much zinc would probably be required? A. No, sir.

Mr. SCHLESINGER.—That is all.

On cross-examination by Mr. MORRIS the said witness testified as follows:

Q. Mr. Lockwood, have you there present that card you were holding in your hand a moment ago?

A. Yes, sir.

Q. That is the card that is commonly known as the stock card that is commonly known as the stock card?

A. Yes, sir.

Q. And you mean by stock card, do you, that from that card you can show the minimum amount of stock that is on hand in the storeroom?

A. Well, it shows a balance at all times.

Q. Shows the balance at all times?

A. Yes, sir.

Q. Is there any memorandum on Plaintiff's Exhibit "8," being the stock card, that shows the minimum supply of the particular materials contained in the storeroom?

A. Well, there is what they call the limit of stock. That means when the stock gets down to that point to *re-cover*. I think that was the intention of putting that on the card.

Q. I think I understand what you mean. Let me see if I can ask you. You say the limit of stock?

A. Yes, sir. [228—178]

Q. If we would speak of the maximum that would

(Testimony of George Edward Lockwood.)

be the greatest amount kept? A. Yes, sir.

Q. And if we speak of the lowest that would be the minimum amount? A. Yes, sir.

Q. And you mean by that that you had, as I understand, according to that card, not from your evidence so much, but from Officer Spear's, that on Plaintiff's Exhibit "8" there was a minimum amount designated there relative to the stock of boiler zinc such as is involved in this particular indictment; is that right?

A. You mean on this particular stock card?

Q. Yes, sir. Have you any minimum on Plaintiff's Exhibit "8" for the particular kind of boiler plate that is involved in this indictment?

A. Well, I don't know just what you mean by exhibit "8."

Mr. RIDDELL.—That is exhibit "8" you have in your hand.

A. Oh, that is it. Well, we have a limit of stock that was put on by somebody; I don't know who put it on.

Q. Now, what is the limit?

A. The limit of stock?

Q. For zinc plate, or boiler plate, and my question now is directing your attention to the matters involved in the indictment which these defendants are here to answer.

Mr. ALLEN.—I submit this man probably doesn't know anything about the indictment.

The COURT.—Better make it more specific. Refer to specific quantities or kind.

(Testimony of George Edward Lockwood.)

Mr. MORRIS.—Have you a limit for the amount of zinc plate, [229—179] boiler zinc, upon the card which you now hold in your hand?

A. Yes, sir.

Q. You understand what I mean?

A. Yes, sir.

Q. That limit that is placed there, you shall not allow that stock to go below the limit as shown on the card?

A. Well, it doesn't exactly mean that. It means when your balance is down to limit that you are to re-order at that time.

Q. Re-order at that time? A. Yes, sir.

Q. Now, sir, will you kindly state to this jury what the lowest limit of stock was to be, as shown by that card, before you would notify the storekeeper that zinc of the particular kind was required?

A. Well, the limit marked on this card, I don't know who put it there—

Q. I am not asking you that.

A. Is 4,000 pounds.

Q. 4,000 pounds. Now, sir, directing your attention again to this card, can you tell this jury how many pounds of zinc was delivered by the storeroom over which you had supervision during the month of March? A. Was delivered to the yard?

Q. Was delivered from the storeroom to any place, taken out of your stock?

Mr. ALLEN.—During what period?

Mr. MORRIS.—March, I think it is.

A. Well, there was only one issue made in the

(Testimony of George Edward Lockwood.)

month of March, 1908; that was for 1804 pounds.

Q. 1804 pounds? [230—180] A. Yes, sir.

Q. How many were made in April of 1908?

A. About 25,000 pounds.

Q. 25,000 pounds. Suppose the day before that 25,000 pounds had been demanded or requisitioned, or called for, by somebody, the stock of zinc was down to the minimum of 4,000 pounds, what would have been your condition?

A. Well, we couldn't have filled the orders.

Q. You couldn't have filled the orders?

A. No, sir.

Q. And if calls had come, when I speak of calls I mean calls or requisitions, had come, from the Pacific Fleet, which was then at the navy yard,—

A. Well, the Pacific Fleet—

Q. What is that?

A. The Pacific Fleet was not—oh, the Pacific Fleet, yes, sir.

Q. Yes. If the Pacific Fleet had called for 25,000 pounds of this particular zinc, and your stock was down to the minimum, you would have been compelled to have waited until you could have gotten a supply of zinc to fill that requisition, would you not?

A. Yes, sir.

Q. And is it not a fact that the fleet would have been without that supply for a period from eight to twelve or twenty weeks?

Mr. ALLEN.—Oh, your Honor, I submit that isn't proper cross-examination.

Mr. MORRIS.—You object to it?

(Testimony of George Edward Lockwood.)

Mr. ALLEN.—I do object to it, your Honor. It isn't proper [231—181] cross-examination.

The COURT.—Give me the ground of your objection.

Mr. ALLEN.—As I understand it, he is theorizing now with this witness. I object to it on the ground it is immaterial, incompetent and irrelevant. In explanation of that objection I suggest he is offering this witness to submit him a hypothetical question in regard to facts which the evidence shows did not, does not and possibly could not exist.

The COURT.—I think the objection should be sustained as not proper cross-examination. The Court is in doubt about that being a proper phase of the examination in chief.

Mr. MORRIS.—Note an exception.

Q. I understand that you were keeper of the store-room April, 1908? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And on that stock card which you find there, on that stock card you find a writing limiting the minimum amount of this particular zinc which was to be kept in stock?

A. Well, I will answer that question by saying that limit had been placed on there at some previous date before we had any idea that the Atlantic Fleet was coming around.

Q. Well, it was placed on there before you dreamed the Atlantic Fleet was coming? A. Yes.

Q. But any such limit as that, in anticipation of the Atlantic Fleet, would be an outrageous assump-

(Testimony of George Edward Lockwood.)

ion, would it not? A. Yes, sir. [232—182]

Q. Sir? A. Yes, sir.

Mr. MORRIS.—That is all.

On redirect examination by Mr. RIDDELL the said witness testified as follows:

Q. In regard to the over-deliveries that occurred over there at the yard: Counsel asked you, Mr. Schlesinger, if you drew any unfavorable inference from the fact that those over-deliveries were made here. Did you answer that question?

Mr. SCHLESINGER.—We object to that as not being redirect examination.

The COURT.—He may answer the question.

Mr. SCHLESINGER.—Exception.

A. Well, of course, when an excess of delivery came along that amounted to any amount, why, of course, I naturally noticed it, and I thought, of course, it was strange in a great many cases there was such a large amount of excess material sent in.

Q. And were there occasions when that occurred?

Mr. SCHLESINGER.—Your Honor, we object to that on the ground it is not redirect examination and gone into on chief.

Mr. RIDDELL.—Counsel asked him whether there were any such excess deliveries there as to excite his comment. He says yes, when a delivery would occur there which was very excessive it would excite his comment. Now, I want to know if there were any such deliveries there at that time. That completes the injury, you see, on this particular point.

(Testimony of George Edward Lockwood.)

The COURT.—He may answer that question.
[233—183]

Mr. SCHLESINGER.—Exception.

A. There was some occasions of that kind.

Mr. RIDDELL.—Take the witness.

On recross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. I want to ask you one further question, Mr. Lockwood. Wherever excesses of that kind occurred the excess quantity was either rejected or subsequently accepted, isn't that true, as you testified a few moments ago?

A. Yes, it was either accepted or rejected. It had to be either; they couldn't dispose of it any further way.

Q. And, of course, before a rejection was made, or an acceptance made, the particular articles were inspected by the board?

A. Inspected by a sub-inspector, what they call a sub-inspector.

Q. And the Government only paid for the actual amount it received?

A. Well, they paid for whatever amount they choose to pass. If they passed the full amount, of course, they paid for that; if they didn't they only paid for the amount they passed.

Mr. SCHLESINGER.—That is all, Mr. Lockwood.

On redirect examination by Mr. RIDDELL the said witness further testified as follows:

Q. Do you know whose desk the Inspector's report came back to?

(Testimony of George Edward Lockwood.)

A. Well, the Inspector's report went—the sub-inspector turned that in to the Inspecting Officer.

[234—184]

Q. What do you mean by the “sub-inspector”?

A. Well, they have what they call a sub-inspector that comes around to the storehouse and checks up all material for quantity and quality, and so on, and he turns his report over to the Inspecting Officer, who is a naval officer.

Q. And what does the Inspecting Officer do?

A. The Inspecting Officer uses his judgment, then, in regard to passing. He usually takes, I think, whatever the sub-inspector turns in to him.

Q. Then, do I understand, Mr. Lockwood, that when the Inspectors, this Board of Inspectors, should pass this material they don't look at it, but take the word of this clerk?

A. Well, it is a fact there is a great amount of material passes that the Inspecting Officer himself doesn't see.

[Testimony of A. R. McNeil, for Plaintiff.]

A. R. McNEIL, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

My full name is A. R. McNeil. I live at Port Orchard. I am employed by the United States Navy Yard at Bremerton. I have been employed there since January, 1908. I know the defendant Meyer. At that time he was Chief Clerk in Paymaster

(Testimony of A. R. McNeil.)

Spear's Office. I was a clerk in that office. Mr. Meyer had ten or twelve clerks under him; I don't know the exact number. They were all white men. He had about twelve or fifteen laborers under him. I was stationed at the time in the bookkeeping section. [235—185] Mr. Meyer was in the general office on the second floor of the building. My desk was about twelve or fifteen feet from Mr. Meyer. Part of the time there was a partition between the two desks. I can't state the exact time it was there, however, but I should judge about April 1st, 1908. While that partition was there the men would have to go about twelve to twenty feet from Mr. Meyer's desk to my desk. While the partition was there between his desk and my desk it did not make the distance one would have to go from one desk to the other any longer; there is a door right in the partition, there. In the bookkeeping section I had charge of the stock ledgers. I know what that is, Plaintiff's Exhibit "2"; that is a page from the general stock ledger. It is my handwriting. These two items on the lower side (showing).

Q. Those two items on that side (showing)?

A. And a few of these on the other side are, the first three, I think. There was the record of my office of which Mr. Meyer was chief. He was my superior. I kept that under his direction. He was chief of the office. Of course, we had a chief bookkeeper in charge of that particular section. I did not have an index to that book; the book itself is the index.

Q. Suppose you wanted to find $\frac{1}{2}$ by 12 by 6 zinc,

(Testimony of A. R. McNeil.)

how would you have found it in that book?

A. You have what you call a naval classification at that [236—186] time divided into thirty-one classes, and all metals were in Class 21. And you would naturally turn to book 21, which furnished Class 21, as being the class in which metals were, and you would know that zinc was in it, and the classes were indexed from A to Z in the book. You simply turned to zinc; these are zinc plates, $\frac{1}{2}$ inch, and you look down the column and see zinc plates $\frac{1}{2}$ by 12, and look down the column and see it right on the page.

Mr. RIDDELL.—How long would it have taken you to have gone through that index and found that item, the top item there? I just call your attention to the item on Plaintiff's Exhibit "2," date 3/12/08; what does that mean?

A. March 12th. The entry was made March the 12th.

Q. Requisition or contract number 10-8308?

A. Well, that is requisition 10 S. E., contract 8318.

Q. The call, or inspection, or notice number?

A. 1916.

Q. For—

A. Well, it is 12 by 6; that is simply the size.

Q. That is the size on the book? A. Yes, sir.

Q. And the next column? A. 50,158 pounds.

Q. 50,158? A. Yes, sir.

Q. Unit price is what? A. .713.

Q. Per what? A. Per pound.

Q. .713 cents per pound. Now, when Mr. Meyer

(Testimony of A. R. McNeil.)

went to make [237—187] a requisition for 1½ by 6 by 12 zinc plate subsequent to the 12th day of March, 1908, how long would it have taken him to have found that price?

A. To obtain the information from that book?

Mr. RIDDELL.—Yes.

A. Possibly the time it would take the book down and look to that place, possibly not to exceed two or three minutes.

Q. That book was under—well, some was in your handwriting. Was Mr. Meyer familiar with that book? A. Why, I should think so, yes.

Q. Did you ever seen him using it?

A. I can't say he used that book, but I have seen him use others.

Q. In that series?

A. Well, now, from 1 to 33. That was book 21.

Q. While you were there, Mr. McNeil, you said about the first of April, 1908, that partition was taken down?

A. Somewhere in there, yes; I wouldn't be specific as to the day.

Q. And from that time on, for a time, your desk continued to be within 12 or 15 feet of Mr. Meyer?

A. About, yes.

Q. Who made out the requisitions, or the type-written part?

A. Why, Mr. Meyer and his assistant, Mr. Reed, at times; others when necessary.

Q. What do you mean by that?

A. Well, when he had an overflow of work he

(Testimony of A. R. McNeil.)

would get some one else to do it.

Q. He could designate anybody else?

A. Yes. [238—188]

Q. Who fixed, as a general practice in that office at that time, who fixed the time of delivery on those requisitions?

Mr. SCHLESINGER.—That is calling, your Honor please,—

Mr. RIDDELL.—I am asking him if he knows.

Q. Do you know who fixed the time of delivery on those requisitions?

A. Well, I wouldn't care to state on all requisitions.

Q. Well, state as a general rule.

A. Well, Mr. Meyer.

Q. Now, Mr. McNeil, was there any record kept in your office of prices, outside of this ledger, these thirty-three books, of which Plaintiff's Exhibit "2" is a copy? A. Why, they kept vouchers, yes.

Q. Well, I mean is there any other method you have, or had at that time, in that office for obtaining prices?

A. In the bookkeeping office or the other?

Q. In Mr. Meyer's office, or in the General Storekeeper's office? A. Catalogues.

Q. Of what?

A. Oh, of any material we had in the catalogue file.

Q. You know Paymaster Spear? A. Yes, sir.

Q. Do you know whether or not, Mr. McNeil, about the first day of April, 1908, Paymaster Spear was

(Testimony of A. R. McNeil.)

accustomed—do you know the method he was accustomed to use in signing requisitions and other papers that were brought to him for his personal signature?

Mr. SCHLESINGER.—Now, your Honor, please, we object to that on the ground that Paymaster Spear himself has been upon [239—189] the stand and has given his method; and this is calling for his opinion as to what method Paymaster Spear was pursuing.

Mr. RIDDELL.—Your Honor, it is not calling for his opinion at all; it is calling for a fact as it existed in the office at that time; and as it was known to this defendant Meyer when he went to prepare a requisition. If he went to prepare a requisition for \$625, he knew Mr. Spear would sign it and thumb it up like that (showing). That was a—

The COURT.—Read the question. (Question repeated.) He may answer.

Mr. SCHLESINGER.—Exception.

The COURT.—If you know.

A. I have seen him sign them, and Mr. Meyer would carry them in, or put them in in the usual way, and Mr. Spear would sign them, and they would be mailed to the Navy Pay Office.

Q. Who put the estimated cost in the requisitions?

A. Which requisitions?

Q. On the requisitions for stock.

A. Naval Supply or—

Q. Yes.

A. Why, it was done in the office. As far as I

(Testimony of A. R. McNeil.)

know, Mr. Meyer did it. He had the catalogues there, and so forth, to take it from.

Q. And this Plaintiff's Exhibit "2" also?

A. On this (showing)?

Q. No, the other paper you had there.

A. Oh, the stock ledger sheet?

Q. Yes.

A. That is just a part of the stock ledger. There is no [240—190] prices estimated on that; that is the price that was regularly paid.

Q. That it was actually bought for?

A. Yes, that it was actually bought for. There is no estimated price there.

Q. That was what it cost to the yard, the navy yard?

A. Yes, sir.

Q. Delivered at the yard?

A. Delivered f. o. b., yes.

Mr. RIDDELL.—That is all.

On cross-examination by Mr. MORRIS, the said witness testified as follows:

Q. Mr. McNeil, you had ten or twelve clerks in the Storekeeper's Department at the navy yard in April, of 1908, about that time?

A. About that many; yes, sir.

Q. At the present time you have about thirty clerks?

A. I don't think there are thirty, Mr. Morris; about twenty-three, I think.

Q. About twenty-three clerks. At the time that you had these ten or twelve clerks in April, the Pacific Fleet was at the navy yard?

(Testimony of A. R. McNeil.)

A. Pacific Fleet?

Q. Yes, sir; and thereafter the Atlantic Fleet came.

A. Oh, yes; they come and go. The Pacific Fleet and the Atlantic Fleet came later.

Q. Now, you say that Mr. Meyer made out requisitions sometimes, and at other times, when there was a rush, his assistants made them out? [241—191]

A. Yes, sir.

Q. And his assistants made out the requisitions and also placed on the estimate?

A. Well, I wouldn't state they did, no.

Q. You don't know whether they did or did not?

A. Whether they placed the estimate?

Q. Yes.

A. I have heard them ask Mr. Meyer to assist them in that course.

Q. Now, Officer Spear's office was not in the room in which you and Mr. Meyer and the other clerks had their office? A. No, sir; it was not.

Q. His was a little office separate and distinct and apart? A. Yes.

Q. And these papers, requisitions, and so forth, were taken or sent from the room in which they were prepared into Officer Spear's office? A. Yes, sir.

Q. That was the general custom?

A. That was the general custom.

Q. Now, during the spring and summer of 1908 there was a great deal of rush in the Storekeeper's Office, was there not? A. Yes, sir.

Q. It was a continual bustle and rustle in gather-

(Testimony of A. R. McNeil.)

ing together the supplies or requisitions for supplies anticipated that would be used by the respective fleets? A. Yes, at that time.

Q. At that time. That is all. [242—192]

On redirect examination by Mr. RIDDELL, the witness testified as follows:

Q. Do you know whose handwriting that is (exhibiting paper to witness)?

A. It looks like Mr. Spaulding's initials there.

Q. Have you ever seen him write? A. Yes.

Q. Can you pass an opinion upon it? I show you Plaintiff's Exhibit "5" and call your attention to the photographic copy of the first of requisition number 438, and call your attention to the writing here "Required to fill requisitions from the Atlantic Battleship Squadron." Did you ever see Mr. Meyer write?

A. Yes.

Q. And, in your opinion, whose handwriting is that?

A. Well, it looks—it is his, yes, I believe; that is, with the wide ink—

Mr. RIDDELL.—That is all.

On recross-examination by Mr. SCHLESINGER, the witness testified as follows:

Q. You were asked by counsel whether you were familiar with the methods of Mr. Spear and you said you were. As a matter of fact, he was a very attentive official, was he not, attentive to his duties?

A. In so far as I know.

Q. Yes. He wasn't a careless man, was he, so far as you know?

(Testimony of A. R. McNeil.)

A. Well, I don't know his personal habits.

Q. I am talking of his official habits. [243—193]

A. Well, I was never in direct communication with Paymaster Spear; I couldn't swear to the fact whether he was or not.

Q. And he was at his post of duty every day?

A. With the possible exceptions when he wanted to come down to Seattle on business.

Q. You never heard any complaints that Mr. Spear was an inattentive official, or careless official?

A. I was not in a position to hear those things.

Q. And had you ever noticed him making a hasty or imperfect examination of any papers?

A. Why, yes; I have taken papers in there that he signed.

Q. He would sign them? A. Yes, sir.

Q. Did he ever say he did not understand them?

A. Never said so, relied on the men under him to give him a square deal, I guess.

Q. And relied on what he knew of the transaction itself, did he? A. I couldn't say that.

Q. You had no discussion with Mr. Spear at all about the performance of his duties, did you?

A. No, sir; it was out of my—

Q. You were a subordinate there, were you not, Mr. McNeil, a subordinate officer? A. Yes, I was.

Q. To keep these books. These books that you say were kept partly by Mr. Meyer and partly by yourself were open to the examination of every clerk in the office, were they not?

A. Well, I didn't say those books were kept by

(Testimony of A. R. McNeil.)

Mr. Meyer. If you will look back in my testimony, I said I kept those books [244—194] and Mr. Meyer examined them when he wished to.

Q. Could they not have been examined by every single clerk there? A. Why, yes.

Q. That book wasn't kept by Mr. Meyer in his personal custody, was it? A. No, in mine.

Mr. SCHLESINGER.—That is all.

On further recross-examination by Mr. RIDDELL the witness testified as follows:

Q. Mr. McNeil, you said, in answer to Mr. Schlesinger's question, that you took papers to Mr. Spear to sign? A. Yes.

Q. Would he ever sign those papers without looking them over?

A. Why, I have seen him do so. I think he relied on my judgment, however.

Mr. RIDDELL.—That is all.

[Testimony of J. A. Kettlewell, for Plaintiff.]

J. A. KETTLEWELL, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

On direct examination by Mr. RIDDELL, the witness testified as follows:

My name is J. A. Kettlewell. I am the person named as one of the defendants in this case. I was indicted along with these other defendants and pled guilty and served my sentence; since then I have received a pardon from the President, which enables me to testify in this case. I was Chief Clerk in the

(Testimony of J. A. Kettlewell.)

Navy Pay [245—195] Office at Seattle for a time; under Robert H. Orr, Paymaster, part of the time. I know the defendant Meyer.

Q. During any part of the year, 1907, Mr. Kettlewell, did you have any conversation with Mr. Meyer relative to purchases that had been made by the navy yard from Mr. Goldberg of the Great Western Smelting & Refining Company? A. Yes.

Mr. SCHLESINGER.—Now, your Honor, please, we object to any evidence as to any conversation or acts prior to the time set out in this indictment.

Mr. RIDDELL.—Your Honor, the Government contends that the testimony of conversations between Mr. Kettlewell and these other defendants here shall be limited as evidence as against only the particular defendant who has engaged in the conversation with him. I think that is prior to the time of the conspiracy, but the conversations with Mr. Kettlewell had with the defendants in this case are evidence against those men themselves, but I think the jury should be instructed that it should not be considered as evidence against any defendant except the one who was present in the conversation. I make the offer with that explanation.

Mr. SCHLESINGER.—I don't understand, if your Honor please, that a conversation had prior to the formation of the alleged conspiracy can properly be admitted in evidence.

The COURT.—Well, we haven't got to that point yet.

(Testimony of J. A. Kettlewell.)

Mr. SHIPLEY.—That is the question asked by counsel.

Mr. RIDDELL.—I intended to say to be made, not had been made.

Mr. SCHLESINGER.—Counsel has handed the gentlemen in the box certain documents, and they can't very well handle the [246—196] documents and listen to the testimony.

Mr. RIDDELL.—I submit, your Honor, the jurors are the best judges of that. They know what their duty is.

The COURT.—I think that while the testimony that is directly upon the issue, that the jurors' mind better be directed to the testimony that is being received than dividing the testimony between that and something else. I know that is the way I care to listen to it when I receive it. Proceed.

Mr. RIDDELL.—You say you did have such a conversation with the defendant Meyer?

A. Yes.

Q. Now, just tell the jury what those conversations were.

Mr. SCHLESINGER.—Now, your Honor please, we make the objection upon the ground heretofore enumerated, the ground it calls for a conversation antedating the alleged conspiracy set out in the indictment, and therefore is not binding, not a part of the *res gestae*.

Mr. RIDDELL.—Your Honor, this shows, just as the other collateral matter that we offered the other day, or other transactions, it shows the—

(Testimony of J. A. Kettlewell.)

The COURT.—If I want to hear from you I will tell you. Of course, the testimony can't all go in at once. I think that this objection is overruled.

Mr. SCHLESINGER.—Note an exception, your Honor.

Mr. RIDDELL.—Just state what those conversations were, Mr. Kettlewell, with relation to purchases from the Great Western Smelting & Refining Company, for which Mr. Goldberg was manager in the year 1907. Just tell the jury.

Mr. SCHLESINGER.—Your Honor please, we again reluctantly object on the ground the time is not fixed, nor persons [247—197] present, nor the place, and we are certainly entitled to have the time, place and persons.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

A. Mr. Meyer came—saw me frequently at the Navy Pay Office about the middle of the year 1907, or later, later in the year, and called attention to the fact that Mr. Goldberg, representing the Great Western Smelting & Refining Company,—

Mr. SCHLESINGER.—Please speak a little louder.

Mr. RIDDELL.—Speak louder, Mr. Kettlewell; the jurors can't hear you.

Q. (Continuing.) Mr. Meyer frequently came to the Navy Pay Office and told me that they were to make quite a number of requisitions for zinc plate, and that Goldberg would make it right if he got any business. Mr. Meyer frequently saw me in regard

(Testimony of J. A. Kettlewell.)

to that. I didn't see Mr. Goldberg at that time.

Q. Did Mr. Goldberg get any business?

A. He got quite a bit of business.

Mr. SCHLESINGER.—We object to that as immaterial, incompetent and irrelevant, and the records are the best evidence.

The COURT.—He may answer it.

Mr. SCHLESINGER.—Exception.

A. Mr. Goldberg was getting quite a bit of business.

Q. Then did you, from that time on until the fore part of January, 1908, had you seen Mr. Goldberg?

A. I seen Mr. Goldberg frequently; yes.

Q. I mean about the business that he was getting. A. Yes, I saw him.

Q. Well, you say Mr. Meyer said he would make it right with you. Until the fore part of January, 1908, had he made it [248—198] right with you?

A. No, he hadn't.

Q. Then what did you do?

A. I saw Mr. Meyer again, or rather he saw me, in the Navy Pay Office in December, I think it was, in 1907, and I called his attention to the fact that Goldberg had been getting a lot of business but nothing had been done about it. He says, "I will see Jimmie," as he referred to Goldberg, "and he will come over and see you about it and make it all right."

Q. Up until the fore part of January, 1908, then, had he seen you and made it all right with you?

A. No, he hadn't.

Q. Did you take any action at that time, then?

(Testimony of J. A. Kettlewell.)

A. What do you mean by—

Q. When Mr. Goldberg didn't come and see you and make it all right with you, did you take any action as a result of that?

A. I told Meyer about this, and along in January, I think it was January 11th, or probably a day or so previous to that, a voucher came through for an excessive amount of—for an over-delivery of zinc, and I turned it down.

Mr. RIDDELL.—I want to have folder, requisition 193, Series 1908, marked for identification as Plaintiff's Exhibit "17," folder and contents.

(Folder referred to marked Plaintiff's Exhibit "17" for identification.)

Q. Mr. Kettlewell, I show you folder and contents marked for identification Plaintiff's Exhibit "17." Do you know what those papers are?

A. Do I know what? [249—199]

Q. Do you know what those papers are?

A. Yes, sir.

Q. Are they the official records of the United States Pay Office at Seattle? A. No, sir.

Q. What are they?

A. This is evidently the navy yard folder.

Q. Navy yard folder for what?

A. For requisition number 193.

Mr. RIDDELL.—I made a mistake, your Honor. The other one was navy yard folder of requisition number 193, that is, "17," and I want marked for identification "18," the Navy Pay Office folder.

The COURT.—"18" is Navy Pay Office folder.

(Testimony of J. A. Kettlewell.)

Mr. RIDDELL.—“18” is Navy Pay Office folder for requisition number 193.

(Folder referred to marked Plaintiff’s Exhibit “18” for identification.)

Q. I show you folder and contents—

Mr. MORRIS.—That is Navy Pay Office folder for—

Mr. RIDDELL.—Requisition number 193 as Plaintiff’s Exhibit “18” for identification.

Q. I show you Plaintiff’s Exhibit “18” for identification and ask you if you know what that is?

A. Yes, sir.

Q. What is that, Mr. Kettlewell?

A. That is the Navy Pay Office folder covering requisition 193.

Mr. SCHLESINGER.—I understand these are not offered in evidence. [250—200]

Mr. RIDDELL.—Simply identified so far.

Q. In Plaintiff’s Exhibit “17,” Mr. Kettlewell, I call your attention to a paper dated January 11, 1908, and signed “Robert H. Orr, Paymaster,” and ask you if that is the letter to which you referred?

A. Yes, sir, that is the letter.

Q. Now, you say you turned it down. Just tell the jury what you did when you turned it down.

The COURT.—Let these be further marked.

Mr. RIDDELL.—All right. Just mark that letter, Mr. Clerk, plaintiff’s “17-A” for identification.

Mr. SCHLESINGER.—If your Honor please, without having to repeat the objection, may it be understood that our objection goes to all this testi-

(Testimony of J. A. Kettlewell.)

mony relating to transactions or acts prior to the first day of April, 1908, that being the earliest date, I believe, laid in the indictment, is it not, Mr. Allen?

Mr. RIDDELL.—Yes.

The COURT.—That is the stipulation or understanding?

Mr. RIDDELL.—I have no objection to your objection going to all those matters.

The COURT.—Let it so be understood.

Mr. RIDDELL.—When you say you turned that down, Mr. Kettlewell, when you turned that down, what did you do?

A. The voucher was received for a quantity greatly in excess of the amount of the requisition.

Q. Had it been passed at the navy yard?

A. The voucher had been passed at the navy yard and it came to the Navy Pay Office for payment.

Q. Now, that requisition called for what material?

A. That requisition calls for— [251—201]

Q. What kind of material? A. For zinc plate.

Q. What size? A. $1\frac{1}{2}$ by 6 by 12 inches.

Q. $1\frac{1}{2}$ by 6 by 12 inches?

Mr. MORRIS.—Let me ask, does that folder have reference to the particular zinc mentioned in the indictment?

Mr. RIDDELL.—No, that folder has reference to some 4933 pounds of zinc which Mr. Goldberg delivered over there in December or January.

Mr. MORRIS.—When?

Mr. RIDDELL.—In December or January prior.

Mr. SHIPLEY.—Prior to the indictment.

(Testimony of J. A. Kettlewell.)

Mr. RIDDELL.—Now, that requisition called for 1½ by 6 by 12 plate?

A. Yes, sir.

Q. For how many pounds?

A. The requisition called for 4,000 pounds.

Q. Called for 4,000 pounds. How many pounds were delivered?

A. The voucher showed that 59,033 pounds had been delivered.

Q. 59,033 pounds delivered. Now, what price did he get for it? A. Sixteen cents.

Q. Sixteen cents. Now, as I understand, you dictated this letter to Paymaster Orr?

A. I wrote the letter myself.

Q. You wrote the letter yourself. And then what did you do with it?

A. It was sent to the Commandant in the navy yard in the ordinary course of business. [252—202]

Q. Did you keep a copy of it in your files?

A. Yes, sir.

Mr. RIDDELL.—I therefore offer in evidence at this time, your Honor, Plaintiff's Exhibit "17," being navy yard folder for requisition number 193, Naval Supply Fund, and the contents: The contents being copy number 5 of that requisition, endorsement dated January 13, 1908; letter dated, "U. S. Navy Pay Office," dated—no, this is copy of letter dated U. S. Navy Office, January 11, 1908, to the Commandant; original calls number 1124 for inspection of supplies; an inspection report by the master machinist; a bill of the Great Western Smelting &

(Testimony of J. A. Kettlewell.)

Refining Company, dated December 13, 1907, for 59,033 pounds of zinc at sixteen cents; a card from the card index, requisition 193; an order for supplies dated December 12, 1907, accepting the proposal of the Great Western; call for inspection number 1358; receiver's report attached thereto; a letter dated January 11, 1908, signed Robert H. Orr, Paymaster, with endorsement thereon; a public bill number 506; a second public bill number 506; a third; a fourth public bill number 506; and the notice of rejected articles, dated Puget Sound, Washington, December 5, 1908, for 1933 pounds of $\frac{1}{2}$ by 6 by 12 zinc plates, cause of rejection "In excess." In order to save time I make the offer of the other one at this time.

I also offer in evidence Navy Pay Office folder, being requisition number 193 and contents, consisting of second memorandum copy of requisition number 193; copy of letter dated January 11, 1908, to the Commandant of the navy yard; third memorandum copy of requisition number 193; proposal to the W. A. Corder Company; and the Great Western Smelting & Refining Company; a memorandum in blue pencil [253—203] attached thereto; one to the Seattle Hardware, proposal to the Seattle Hardware Company; proposal to Pacific Engineering Company; proposal to Pacific Metal Works; proposal to Western Iron & Metal Company; proposal to Schwabacher Hardware Company; an order for supplies accepting the bid of the Great Western Smelting & Refining Company, dated December 12, 1907, and stamp in red ink, "Robert H. Orr."

(Testimony of J. A. Kettlewell.)

Mr. MORRIS.—What is the number of the exhibit?

Mr. RIDDELL.—“18.”

The COURT.—Any objection to these offers?

Mr. KERR.—We are examining them, your Honor. We haven't had an opportunity to look at the contents of these folders. If your Honor will permit us to look them over we may not care to object, and we may want to preserve an objection of some kind.

The COURT.—Is there any further examination that can be made?

Mr. RIDDELL.—Now, when you sent your protest over to the navy yard against the acceptance of this excessive quantity of zinc because the price was excessive, what happened?

A. Another voucher was sent over for the 4,000 pounds called for by the requisition.

Q. Was that passed? A. Yes, sir.

Mr. SCHLESINGER.—Mr. Riddell, do I understand you offer all of the enclosures in this folder?

Mr. RIDDELL.—Yes.

Mr. SHIPLEY.—Those you enumerated?

Mr. RIDDELL.—Yes, those I enumerated.

Mr. SCHLESINGER.—Your Honor please, we object to the [254—204] introduction in evidence of these papers, without enumerating each paper, bearing date December 20, 1907, and January 11, 1907, January 16th, 1907, and December 4, 1907, as well as the letter offered in evidence dated January 11, 1908, and the public bill bearing the same date, upon

(Testimony of J. A. Kettlewell.)

the ground that these transactions, which indeed are not claimed to be in anywise criminal or improper, are not included within this indictment, and are too remote in point of time; and upon the further ground they are no wise binding upon any one of these defendants. And we make, if your Honor please, the same objection—your Honor will allow me to state it now?

The COURT.—Yes.

Mr. SCHLESINGER.—To exhibit “18” for identification, and to those portions of the exhibit reading, “Memorandum copy 3, dated September 4, 1907; the proposal of the supplies to the W. A. Corder Company bearing same date; to the proposal of the Great Western Smelting Company bearing the same date; to the proposal of the Seattle Hardware Company bearing the same date; to the proposal of the Pacific Engineering Company bearing the same date; to the proposal of the Pacific Metal Works bearing the same date; to the Western Hardware & Metal Company bearing the same date; the Schwabacher Hardware Company bearing the same date; and also to a letter dated January 11, 1908, and to an order of supplies, December 12, 1907. We object to those documents upon the ground that we are not shown to have been in any wise connected with them, we didn’t authorize them to be made, and they are not included within the transactions embraced within this indictment, and for that purpose, and hence for those reasons, they are immaterial, incompetent and

(Testimony of J. A. Kettlewell.)

irrelevant, and are too remote in point of time.

[255—205]

The COURT.—The objection will be overruled. This will be admitted, of course, only for the instruction of the jury, and limited to this consideration, for the purpose of showing the relation between the parties; and the Court will further instruct the jury finally as to the consideration to be given to these documents in its deliberations.

Mr. SCHLESINGER.—Note an exception.

(Papers referred to as Plaintiff's Exhibits "17" and "18" for identification received in evidence and marked Plaintiff's Exhibits "17" and "18.")

Mr. RIDDELL.—(Reading letter written by Mr. Kettlewell relative to over-delivery of zinc plates.)

Q. You say, then, Mr. Kettlewell, that after that letter was written a new requisition was made for the 4,000 pounds and sent to your office, a new voucher was made for 4,000 pounds and sent to your office? A. Yes.

Q. Was that voucher paid? A. Yes.

Q. A check was issued therefor? A. Yes.

Q. And delivered to the Great Western Smelting & Refining Company? A. Yes.

Q. Now, Mr. Kettlewell, following that letter, after you sent that letter to the navy yard, did you see any of these defendants in relation to that matter?

A. Meyer called at the Navy Pay Office within a week, I should say within three or four days of that time.

(Testimony of J. A. Kettlewell.)

the ground that these transactions, which indeed are not claimed to be in anywise criminal or improper, are not included within this indictment, and are too remote in point of time; and upon the further ground they are no wise binding upon any one of these defendants. And we make, if your Honor please, the same objection—your Honor will allow me to state it now?

The COURT.—Yes.

Mr. SCHLESINGER.—To exhibit “18” for identification, and to those portions of the exhibit reading, “Memorandum copy 3, dated September 4, 1907; the proposal of the supplies to the W. A. Corder Company bearing same date; to the proposal of the Great Western Smelting Company bearing the same date; to the proposal of the Seattle Hardware Company bearing the same date; to the proposal of the Pacific Engineering Company bearing the same date; to the proposal of the Pacific Metal Works bearing the same date; to the Western Hardware & Metal Company bearing the same date; the Schwabacher Hardware Company bearing the same date; and also to a letter dated January 11, 1908, and to an order of supplies, December 12, 1907. We object to those documents upon the ground that we are not shown to have been in any wise connected with them, we didn’t authorize them to be made, and they are not included within the transactions embraced within this indictment, and for that purpose, and hence for those reasons, they are immaterial, incompetent and

(Testimony of J. A. Kettlewell.)

irrelevant, and are too remote in point of time.

[255—205]

The COURT.—The objection will be overruled. This will be admitted, of course, only for the instruction of the jury, and limited to this consideration, for the purpose of showing the relation between the parties; and the Court will further instruct the jury finally as to the consideration to be given to these documents in its deliberations.

Mr. SCHLESINGER.—Note an exception.

(Papers referred to as Plaintiff's Exhibits "17" and "18" for identification received in evidence and marked Plaintiff's Exhibits "17" and "18.")

Mr. RIDDELL.—(Reading letter written by Mr. Kettlewell relative to over-delivery of zinc plates.)

Q. You say, then, Mr. Kettlewell, that after that letter was written a new requisition was made for the 4,000 pounds and sent to your office, a new voucher was made for 4,000 pounds and sent to your office? A. Yes.

Q. Was that voucher paid? A. Yes.

Q. A check was issued therefor? A. Yes.

Q. And delivered to the Great Western Smelting & Refining Company? A. Yes.

Q. Now, Mr. Kettlewell, following that letter, after you sent that letter to the navy yard, did you see any of these defendants in relation to that matter?

A. Meyer called at the Navy Pay Office within a week, I should say within three or four days of that time.

(Testimony of J. A. Kettlewell.)

the ground that these transactions, which indeed are not claimed to be in anywise criminal or improper, are not included within this indictment, and are too remote in point of time; and upon the further ground they are no wise binding upon any one of these defendants. And we make, if your Honor please, the same objection—your Honor will allow me to state it now?

The COURT.—Yes.

Mr. SCHLESINGER.—To exhibit “18” for identification, and to those portions of the exhibit reading, “Memorandum copy 3, dated September 4, 1907; the proposal of the supplies to the W. A. Corder Company bearing same date; to the proposal of the Great Western Smelting Company bearing the same date; to the proposal of the Seattle Hardware Company bearing the same date; to the proposal of the Pacific Engineering Company bearing the same date; to the proposal of the Pacific Metal Works bearing the same date; to the Western Hardware & Metal Company bearing the same date; the Schwabacher Hardware Company bearing the same date; and also to a letter dated January 11, 1908, and to an order of supplies, December 12, 1907. We object to those documents upon the ground that we are not shown to have been in any wise connected with them, we didn’t authorize them to be made, and they are not included within the transactions embraced within this indictment, and for that purpose, and hence for those reasons, they are immaterial, incompetent and

(Testimony of J. A. Kettlewell.)

irrelevant, and are too remote in point of time.

[255—205]

The COURT.—The objection will be overruled. This will be admitted, of course, only for the instruction of the jury, and limited to this consideration, for the purpose of showing the relation between the parties; and the Court will further instruct the jury finally as to the consideration to be given to these documents in its deliberations.

Mr. SCHLESINGER.—Note an exception.

(Papers referred to as Plaintiff's Exhibits "17" and "18" for identification received in evidence and marked Plaintiff's Exhibits "17" and "18.")

Mr. RIDDELL.—(Reading letter written by Mr. Kettlewell relative to over-delivery of zinc plates.)

Q. You say, then, Mr. Kettlewell, that after that letter was written a new requisition was made for the 4,000 pounds and sent to your office, a new voucher was made for 4,000 pounds and sent to your office? A. Yes.

Q. Was that voucher paid? A. Yes.

Q. A check was issued therefor? A. Yes.

Q. And delivered to the Great Western Smelting & Refining Company? A. Yes.

Q. Now, Mr. Kettlewell, following that letter, after you sent that letter to the navy yard, did you see any of these defendants in relation to that matter?

A. Meyer called at the Navy Pay Office within a week, I should say within three or four days of that time.

(Testimony of J. A. Kettlewell.)

Q. All right, tell the jury what happened there.
[256—206]

A. Mr. Meyer protested against making the matter official and said I should have taken that matter up with him and that it could have been straightened out, wanted to know what I wrote it for. I told him that Goldberg hadn't done as Meyer said he was doing, and thought that would be a good chance to call his attention to it. Well, he says, "I will see Goldberg and he will fix it all right, I will have him come over and see you."

Q. And did Mr. Goldberg come and see you?

A. Mr. Goldberg came into the office within a short time after that, about three or four days afterwards, I should judge.

Q. And what happened there?

A. He made no reference to this particular requisition, but he called me out in the hall and handed me a hundred dollars.

Q. Did you have any conversation with him at that time? A. Yes.

Q. What was said?

A. He says, "This will straighten up all those old matters, and there is a big requisition coming through, Meyer is going to make a big requisition as soon as he can," and, he says, "I want everything straightened up before that comes through."

Q. Did he say anything about any compensation to you?

A. Yes, he told me that he would divide the profits on the basis of twenty per cent.

(Testimony of J. A. Kettlewell.)

Q. Make an arrangement to divide the profits on the basis of—

A. Twenty per cent to Meyer and twenty per cent to me.

Q. Twenty per cent to Meyer and twenty per cent to you. Goldberg told you that? [257—207]

A. Goldberg told me that; yes.

Q. Where was that?

A. In the hallway of the Walker Building, where the Navy Pay Office was situated.

Q. That was right down here within two blocks?

A. Down on University and Second Avenue.

Mr. SCHLESINGER.—You haven't fixed the time.

Mr. RIDDELL.—I think so.

J. A. KETTLEWELL, a witness on behalf of the plaintiff, on the stand—continued direct examination.

(By Mr. RIDDELL.)

Q. Mr. Kettlewell, you said yesterday when the voucher for the 1,933 pounds came in it was rejected and a new voucher was made out for the 4,000 pounds. That was paid by check, was it?

A. Yes, sir.

Q. Now, Mr. Kettlewell, did any requisition ever come through for the 1,933 pounds?

A. Yes, a subsequent requisition was made to cover that at the navy yard.

Q. I will have this marked as Plaintiff's Exhibit for Identification "19."

(Same marked Plaintiff's Exhibit "19" for Identification.)

(Testimony of J. A. Kettlewell.)

Q. I show you a folder and contents, which has been marked for identification, Plaintiff's Exhibit "19." Do you know what they are, Mr. Kettlewell?

A. Yes, sir. [258—208]

Q. What are they?

A. This is the Navy Pay Office copy of requisition 359 and all of the papers pertaining to it.

Q. For what, Mr. Kettlewell?

A. For 1,933 pounds of zinc, boiler, 1½ by 6 by 12.

Q. It is an official record in the office of the United States Navy Pay Office here? A. Yes, sir.

Q. And was made under your official direction as Chief Clerk?

A. Yes, made under my direction. No, this was received from the navy yard.

Q. What are the rest of the contents of the folder? The record was made under your direction as Chief Clerk? A. Yes, the rest of it was, yes.

Q. And that is a part of the official records of the United States Navy Pay Office, is it? A. Yes, sir.

Mr. RIDDELL.—We offer that in evidence.

Mr. SCHLESINGER.—I understand you offer the entire folder, Mr. Riddell?

Mr. RIDDELL.—Yes, the entire folder.

Mr. SCHLESINGER.—If your Honor please, we simply object as to the introduction of these papers upon the same grounds urged with respect to the other exhibits admitted yesterday afternoon.

The COURT.—Yes, same ruling.

Mr. SCHLESINGER.—Without having to repeat the objection.

(Testimony of J. A. Kettlewell.)

The COURT.—Yes, and the same ruling. Not an exception.

Mr. SCHLESINGER.—Mr. Riddell, do you know whether or not [259—209] this folder is complete and contains all of the correspondence?

Mr. RIDDELL.—I assume that it does.

Q. Mr. Kettlewell, do you know whether this folder, whether there is anything missing from it?

A. I didn't examine it; I don't know.

Q. All right.

(Exhibiting folder to witness.)

Mr. MORRIS.—Wouldn't it be better for him to examine it first?

Mr. RIDDELL.—That is what I am having him do.

Q. Is it complete?

A. Why, apparently. There may have been other papers that I have no recollection of.

Mr. MORRIS.—What is the answer?

A. Apparently complete.

Mr. ALLEN.—Apparently, There may have been other papers you are not familiar with.

Mr. SCHLESINGER.—I think, if your Honor please, we ought to have them all.

Mr. RIDDELL.—Do you know of any other papers that belong in there, Mr. Kettlewell?

A. I don't know of any others that should be there, no.

Mr. RIDDELL.—We offer that in evidence as Plaintiff's Exhibit "19."

The COURT.—Same ruling. You will read it to

(Testimony of J. A. Kettlewell.)

the jury now. Exception allowed.

Mr. RIDDELL.—Yes, your Honor. I will just read this one copy of the requisition, Naval Supply Fund, for stock, 1,933 pounds.

(Reading same to jury.) [260—210]

(Folder and contents referred to received in evidence and marked Plaintiff's Exhibit "19.")

Q. When that requisition reached your office over here, Mr. Kettlewell, what did you do?

A. Called for bids in the ordinary way.

Q. Who originated this requisition?

A. It originated in the General Storekeeper's office at the navy yard.

Q. When the requisition came over you had those bids prepared, sent out those bids? A. Yes, these bids—

Q. To what companies?

A. Sent to the Great Western Smelting & Refining Company, W. A. Corder Company, American Iron & Metal Company, and Hambach & Company.

Q. Do you know who the American Iron & Metal Company was?

A. I know there was such a concern. I don't know anything about the personnel of the concern.

Q. Do you know who owned the concern, the American Iron & Metal Company?

Mr. SCHLESINGER.—We object as calling for an opinion of the witness and calling for his conclusion. How in the world would he be able to say who owned a certain concern?

The COURT.—I don't know whether it is a part-

(Testimony of J. A. Kettlewell.)

nership or corporation. If he knows he can tell, of his own personal knowledge.

Exception allowed.

Mr. RIDDELL.—Do you have any personal knowledge as to who owns it?

A. No, sir, I have no knowledge at all. [261—211]

Q. Did you ever hear any of the defendants say who owned it?

Mr. SCHLESINGER.—We object to that, if your Honor please, on the ground it would be purely hearsay.

The COURT.—If he heard the defendants say he may answer.

Mr. SCHLESINGER.—And another objection is, he should specify the particular defendant, the time, place and circumstance.

The COURT.—Overruled. If he knows.

Mr. SCHLESINGER.—Exception.

Mr. RIDDELL.—Did you ever hear any of these defendants say who owned that concern?

A. No, I can't say that I have.

Q. Now, that folder is in evidence, Mr. Kettlewell, and it shows the American Iron & Metal Company, by J. D. Rubenstein. Do you know what office Mr. Rubenstein had in that concern?

Mr. SCHLESINGER.—We object as not being proper direct examination, and not being binding upon the defendant, and not the best evidence.

The COURT.—He may answer if he knows what

(Testimony of J. A. Kettlewell.)

connection Rubenstein had with it. Exception allowed.

Mr. SCHLESINGER.—That means of his personal knowledge and not mere hearsay.

The COURT.—Yes, if he knows personally.

A. All that I know is that J. D. Rubenstein signed the bid.

Mr. RIDDELL.—You have seen Mr. Rubenstein's signature, have you?

A. I have seen the signature, J. D. Rubenstein, on these bids, is all I know about it.

Q. When these bids came in from the American Iron & Metal [262—212] Company, did they always bear the signature of J. D. Rubenstein?

Mr. SCHLESINGER.—I object on the ground the bids speak for themselves.

A. I couldn't say.

Mr. RIDDELL.—All right.

Q. Was this material awarded, this 1,933 pounds of zinc on this requisition were awarded, were they?

A. Yes, sir.

Q. To whom?

A. Awarded—well, the records show there. I will have to see that. The Great Western Smelting and Refining Company.

Q. Mr. Kettlewell, do you know what business the American Iron & Metal Company was in, what business they did?

A. Why, they were in the iron and metal and junk business, I believe.

Q. Did they carry any stock, do you know whether

(Testimony of J. A. Kettlewell.)

they carried any stock? A. I don't know.

Mr. SCHLESINGER.—We object to calling for a conclusion of the witness. He said he didn't know, I understand.

Mr. RIDDELL.—I asked him if he did.

Mr. SCHLESINGER.—What do you mean by stock?

The COURT.—Proceed. Exception allowed.

Mr. RIDDELL.—Do you know whether they carried any material in stock down there such as zinc called for?

Mr. SCHLESINGER.—We object to that as immaterial, incompetent and irrelevant and not calling for the personal knowledge of the witness. [263—213]

The COURT.—It calls for his personal knowledge if he knows. Exception allowed.

A. I never was at their place of business; I don't know what they carried or anything more than their designation in the city directory as far as their business is concerned.

Mr. RIDDELL.—Now, I show you a paper marked for identification, Plaintiff's Exhibit "20." Do you know what that is?

A. This is apparently the navy yard copy of requisition 359.

Q. That is an official record at the navy yard office? A. Yes, apparently.

The COURT.—Has that been marked?

Mr. RIDDELL.—Yes, your Honor, Plaintiff's Exhibit "20" for identification. I offer Plaintiff's

(Testimony of J. A. Kettlewell.)

Exhibit "20" in evidence, the folder and contents.

Mr. ALLEN.—That, your Honor, to be coupled up with the explanation of Mr. House that it was taken from the navy office by him.

The COURT.—That is No. 359?

Mr. SCHLESINGER.—Will your Honor let me ask the witness one question?

The COURT.—Yes.

Mr. SCHLESINGER.—Does that folder as it comes to you now, contain all of the contents that it ever had contained?

A. That is not a folder that I have had access to. It is the first time I have seen it.

Mr. SCHLESINGER.—Do you know what were the original contents of this particular folder?

A. No, sir. [264—214]

Mr. SCHLESINGER.—Do you know what has been removed from the folder?

A. I don't know anything about the folder; I never saw it before.

Mr. SCHLESINGER.—If your Honor please, making the objections heretofore made to other exhibits, not only we object—

The COURT.—The same objection is made as heretofore?

Mr. SCHLESINGER.—Yes, sir.

The COURT.—Overruled and let it be admitted.

Note an exception.

(Folder and contents referred to, received in evidence and marked Plaintiff's Exhibit "20.")

Mr. RIDDELL.—This one contains that other

(Testimony of J. A. Kettlewell.)

requisition that was read to you before from the Navy Pay Office, contains a call for inspection, a bill of the Great Western, for material, with a copy of requisition and this letter dated March 14, 1908.

(Reading same to jury.)

Mr. SPIRK.—Whose signature is there?

Mr. RIDDELL.—E. E. Rogers, Paymaster General, U. S. N.

Q. Now, this requisition for this 1,933 pounds, Mr. Kettlewell, corresponds how with the amount rejected after the former requisition for 4,000 pounds?

A. This latter requisition covers the excess quantity over the 4,000 pounds.

Q. The amounts are identical? A. Yes.

Q. Now, when we closed yesterday afternoon you had told the jury about an incident that occurred between you and Mr. Goldberg at the Navy Pay Office when it was located [265—215] down here in the Walker Building. After Mr. Goldberg paid you that hundred dollars—at the time he paid you that hundred dollars did he say anything about any future requisitions?

A. He said that a requisition for a large amount was coming through soon, just as soon as Meyer could get it through.

Q. Then what was the next that occurred with relation to that requisition, that you had anything to do with? Whom did you see next? Did you see Mr. Meyer again?

A. I saw Mr. Meyer—Mr. Meyer saw me, rather; I never went to see him. He saw me in regard to it.

(Testimony of J. A. Kettlewell.)

Q. Where? A. In the Navy Pay Office.

Q. Now, when was that?

A. It was within a week, or was after I was talking to Mr. Goldberg.

Q. And what did Mr. Meyer say at that time?

A. He wanted to know if Goldberg had straightened up matters with me so that he could put this requisition through, and I said that he had. He said, "I will get it through just as soon as I can." He says, "I don't know just when; I will hold it as long as I can and will get it through soon. I will make the requisition for 50,000 pounds of zinc."

Q. Then what was done?

A. Well, a requisition did come through.

Q. I show you Plaintiff's Exhibits "4," "5," "6" and "7," which have been introduced in evidence, and ask you whether or not they relate to the requisitions about which Mr. Meyer and Mr. Goldberg talked to you? A. Yes. [266—216]

Mr. SCHLESINGER.—I think that is leading, Riddell. I submit, your Honor please, in the examination of this kind of a witness he ought to avoid leading questions.

Mr. RIDDELL.—I shall endeavor to do so.

Q. Do you know whether you ever had any talk with any of these defendants about that requisition?

A. Yes.

Q. Well, what requisition is that, Mr. Kettlewell?

A. This is requisition 438, Navy Yard, Puget Sound, requisition No. 438.

Q. For what?

(Testimony of J. A. Kettlewell.)

A. For 50,000 pounds zinc, $1\frac{1}{2}$ by 6 by 12.

Q. Now, Mr. Kettlewell, just briefly, in order that we may get it clear in our minds, when you were appointed to the Navy Pay Office in Seattle Mr. Meyer was appointed as Chief Clerk over there and took your place? A. I understand so; yes.

Q. And you are familiar with the procedure over there?

A. Familiar with the procedure at that time, yes.

Q. At that time, that is what I mean. Now, when these requisitions were made out, how many were made?

A. Why, six copies were made, an original and five copies.

Q. How were they made in the machine, all at the same time?

A. Why, the original is usually made first. The form was a little different at the bottom.

Q. And then the five copies were made?

A. Yes, usually.

Q. Now, when that requisition was made, when those requisitions, the original and five copies, were made, did you get any of [267—217] them?

A. One copy was sent to the Navy Pay Office at Seattle at the time they were made.

Q. And what was done with the rest of them?

A. The rest of them were sent to the Bureau, the Paymaster General's office at Washington.

Q. Were any retained in the navy yard?

A. The storekeeper usually—always retained a copy, yes.

(Testimony of J. A. Kettlewell.)

Q. The storekeeper always retained a copy. Did any of those copies, then, that went to Washington ever come back to you?

A. Yes, the original and one copy came back to the Navy Pay Office.

Q. And the original and the one copy of this requisition 438 are now in the Navy Pay Office folder here? Just examine it and see (exhibiting folder to witness).

A. The second copy is in the folder. The original is, with the voucher, in the Treasury Department, I presume.

Q. All right. Now, just tell the jury, Mr. Kettlewell, when this first copy of the requisition came to you from the navy yard, just tell the jury now what the procedure was in your office.

A. When the copy was received from the navy yard it was placed in this folder, and nothing was done until the requisition was formally approved by the Bureau, by the Paymaster General.

Q. Now, how did it reach you that the requisition had been approved, how did notifications reach you that the requisition had been approved?

A. Usually the requisitions were approved by telegraph to the Commandant, and he notified us by phone, and subsequently [268—218] the original and the copy was returned, and that was our authority for making a purchase.

Q. All right. Then, when you received that telegraphic information from Washington, then what happened?

(Testimony of J. A. Kettlewell.)

A. Then we immediately proceeded to send out proposals to various dealers calling for bids to be opened at a certain time.

Q. Then what happened?

A. And after the bids were opened on a certain day at noon, the award was made to the low bidder, unless there was some—if the bills were all straight, apparently all right, the award was made to the low bidder.

Q. Now, who determined the dates on which the award should be made, the date on which it should be opened, when you were in that office?

A. Why, usually the clerk that made out these requisitions. We had the usual form of procedure. Leave a few days, sufficient time to get these bids out and have them returned.

Q. Did you have anything to do with fixing that date? A. Why, I could have in some instances.

Q. Do you know whether you did in this instance?

A. In this instance I think I did.

Q. Now, the award, the dates on which the bids were to be opened, was placed on the proposal, was it? A. Yes, sir.

Q. And then they were returned how?

A. Well, they were returned either by mail, through the mails, or they were sometimes brought up personally by the bidders and placed in a box that was on the railing. [269—219]

Q. In what form were they brought you?

A. They were always in a sealed envelope. We

(Testimony of J. A. Kettlewell.)

furnished a return envelope with the date on the corner.

Q. With the date on the corper, and that date was what? A. The date of opening.

Q. The date of opening on the corner. Then, after the proposals were opened, the award was made to the low bidder. Then what happened in your office?

A. Then a formal order was written up and mailed to the low bidder, and a copy sent to the storekeeper and a copy filed in our folder in the navy pay office.

Q. Then what was done in your office, what next?

A. Then nothing was done until the voucher was received in payment for the material, and then the voucher would be checked with our records as to the unit price and its tensions, see it was properly filled in, and then payment was made.

Q. Who would do that checking over in your office?

A. Why, Mr. Hayney, a clerk there, usually did that.

Q. Was Mr. Meyer familiar with the procedure of your office?

A. I couldn't say as to that; I presume so.

Mr. MORRIS.—We move to strike out the answer.

Mr. RIDDELL.—Yes.

Q. When the voucher came back from the navy yard what was done then, after it was checked over?

A. After it was checked over, a check was issued in payment therefor, and a copy of the voucher sent with the check to the dealer. A copy of the voucher

(Testimony of J. A. Kettlewell.)

was also sent with the daily reports to the Paymaster General. [270—220]

Q. That was for what purpose, that daily report was sent to the Paymaster General for what purpose?

A. That was for the purpose of keeping account of the local deposit to the credit of the purchasing pay officer.

Q. It was the custom to reimburse his account as these payments were made, to keep a certain balance there all the time and those reimbursements were made under the direction of what officer in Washington?

A. The Bureau of Supplies and Accounts, Paymaster General's office.

Q. Paymaster General's office. And the Paymaster General was notified daily of the amounts of various checks that had been issued against that fund so he could be prepared to repeat it again?

A. Yes, sir.

Q. After the check was issued and these copies of the vouchers were sent out, then what was done?

A. The original voucher was retained in the Paymaster's files until the quarterly statement was prepared, and then they were forwarded to the Treasury Department.

Q. Well, now, after the check was issued, did the check ever return to your office, after the banks cashed the check, did it ever return to your office?

A. No.

Q. Where did it go?

A. Why, I couldn't say, but I presume that it went

(Testimony of J. A. Kettlewell.)

to the Treasury Department.

Q. And you sent your vouchers in, then, to the Treasury Department quarterly?

A. Yes, sir. [271—221]

Q. Now, Mr. Kettlewell, at the time that this requisition for 50,000 pounds of $1\frac{1}{2}$ by 6 by 12 zinc came into your office was there that amount of zinc in the city of Seattle?

The COURT.—If he knows he may tell.

Mr. SCHLESINGER.—If he knows of his own personal knowledge by inspection.

The COURT.—Yes.

Mr. RIDDELL.—Well, not necessarily by inspection; if he has any personal knowledge.

Mr. SCHLESINGER.—It must be a direct personal knowledge, not a knowledge from hearsay.

The COURT.—No, I wouldn't say that. If he can testify from any reasonable inquiry of a man in that position, or a person who has been advised, he can tell, but he should give the knowledge on the basis as conclusive.

Mr. RIDDELL.—You understand that refers, Mr. Kettlewell, to $1\frac{1}{2}$ by 6 by 12 zincs called for in that requisition.

A. What was the requisition?

Mr. SCHLESINGER.—As I understand your Honor's ruling, he cannot answer that by a direct way, but he may show what inquiries he made.

The COURT.—This is my idea: I think if he was advised he could testify, but he should tell the jury the basis on which he bases his conclusion, or facts

(Testimony of J. A. Kettlewell.)

upon which he bases his conclusion.

Mr. RIDDELL.—Did you, or were you in the possession of any facts at that time that enabled you to know, on reasonable inquiry, as to whether or not there was 50,000 pounds of $\frac{1}{2}$ by 6 by 12 zincs in the city of Seattle at that time?

Mr. SCHLESINGER.—We object to that upon the same ground, if [272—222] your Honor please. He has the right to follow your Honor's ruling.

The COURT.—He can answer this by yes or no and then he can state—I assume this is preliminary. Exception.

A. From my knowledge I had no information as to the quantity of zinc in town.

Mr. RIDDELL.—You had no information from your knowledge?

A. You say at the time this requisition was received?

Q. Yes.

A. No, not up to that time I had no knowledge of the quantity of the zinc in town, no, sir.

Mr. RIDDELL.—Did Mr. Goldberg ever tell you whether or not there was that amount of zinc in town?

Mr. SCHLESINGER.—That is decidedly leading, however—

Mr. RIDDELL.—I tried to put it so it wouldn't be.

The COURT.—Proceed.

A. No, Mr. Goldberg never discussed that with me at all, about what stock he carried, or how much stock was in town, never talked of in that way.

Q. Now, when this requisition came through—be-

(Testimony of J. A. Kettlewell.)

fore this requisition came through, do you know whether Mr. Goldberg knew it was coming?

Mr. SCHLESINGER.—One moment. That is objectionable upon the ground it is calling for his opinion as to what Mr. Goldberg might or might not have known.

The COURT.—Yes, let him state if Mr. Goldberg said anything.

Mr. RIDDELL.—Before this requisition came through, did Mr. Goldberg say anything to you about it?

A. I believe I said when he paid me that \$100 he told me this [273—223] requisition was coming through.

Q. Did he say anything to you about the requisition at any other time after that and before the requisition was received by you?

A. He referred to a requisition for a large quantity that was coming through; didn't refer to it by number or anything of that kind. He said that a requisition for a large quantity was coming through.

Q. Now, when a requisition was received by you what did you do?

A. You mean the regular procedure that was gone through?

Q. No, what did you do in this particular instance with this particular requisition?

A. Well, when we got this requisition I phoned Mr. Goldberg and told him it was there.

Q. Had he made any other inquiry about it?

A. Oh, several times. And we agreed to hold the

(Testimony of J. A. Kettlewell.)

requisition a couple of days before sending it out, and that was done, and I had the proposals made out then.

Q. Now, Mr. Kettlewell, what was the regular course of procedure in your office when proposals were made out, how did they reach the dealers, in the ordinary course?

A. Mr. Johnson, a clerk in charge of that particular section, mailed them to the dealers.

Q. In this particular instance what was done?

A. The proposal to Corder & Company was mailed direct, and several others—some of them I took around to the dealers myself, and some I handed to Mr. Goldberg.

Q. I show you these proposals dated April 11, 1908, from navy pay office, Copy of Requisition 438, being Plaintiff's [274—224] Exhibit "7." The first one is headed to the Fowler Metal Company. Tell the jury the history of that particular proposal.

A. Well, what do you want me—how far back do you want me to go?

Q. Well, as preliminary to that, I will ask the Court to instruct the jury—the Court takes judicial notice that the banks—or first, I will call your attention to this notation on the cover of Plaintiff's Exhibit "7," "del. 4/9/08." Tell the jury what that means.

A. That is the date of the telegraphic approval from the Paymaster General's Office.

Q. And when that telegraphic approval was received then you had authority to do what?

(Testimony of J. A. Kettlewell.)

A. We had authority to make the purchase.

Q. I ask the Court to take judicial notice that the night of April 9, 1908, was on Thursday, that the 11th of April, 1908, was on Saturday, and that the 15th of April, 1908, was the following Wednesday.

Mr. RIDDELL.—Now, when those proposals came in, did Mr. Goldberg say anything to you about any of the proposals, did Mr. Goldberg say anything to you about sending out any additional proposals?

A. When the proposals came in—I don't understand just what you mean by that, when the—

Q. When the requisition came in, and after you had sent out the proposals, did Mr. Goldberg ever request any additional proposal to be sent out?

A. I can't answer that yes or no without—

Q. Well, just tell what he did after the proposal went out [275—225] in regard to the Fowler Metal Company bid.

A. After the proposals went out nothing was done. Anything that was done was before the proposals went out.

Q. All right.

A. That is, you want me to tell what happened? I can tell you that.

Q. All right; tell what happened.

A. The requisition was received—or the approval was received on the 9th of April and the proposals were held until the 11th of April. In the meantime, as soon as the requisition was approved, I telephoned Mr. Goldberg and he came to the office and said, "I want to get an extra set of those proposals," he says,

(Testimony of J. A. Kettlewell.)

“I have got another party that I want to bid on this.” He says, “I don’t propose to split up the profits with half a dozen people. I want to get another bidder on this.” I says, “Who will it be?” He says, “I don’t know yet; I will let you know.” I says, “Whoever it is, don’t let them know I know anything about it; have them come up here and get the proposal in the regular way.” And a gentleman did come into the office and get the proposal. He looked over the bulletin board, where we have a copy of this posted, and he says, “I represent the Fowler Metal Company and I would like to get a set of proposals to submit a bid on this zinc,” and I says, “All right,” and I gave him two copies. I didn’t know who he was. And I also gave Mr. Goldberg an extra set of proposals.

Mr. SCHLESINGER.—An extra set?

A. Yes. And I took the other proposals, as P. McManus—W. A. Corder was mailed direct. I took out the proposals of P. McManus, Pacific Engineering Company, Schwabacker Hardware Company, Union Sound Machinery Depot, Seattle Hardware [276—226] Company, Hallidie Machinery Company, I took those out personally to the dealers and made inquiries as to whether or not they had this material.

Q. What did you find?

A. I called particular attention to the fact that we had to have this right away, five days. They, of course, couldn’t furnish it within that time.

Mr. ALLEN.—You say they, of course, couldn’t

(Testimony of J. A. Kettlewell.)

furnish it within that time?

A. They couldn't furnish it within that time. So I says, "Just state that on the proposal and mail it to us."

Q. Now, Mr. Kettlewell, do you recognize the gentleman who came up to your office after Mr. Goldberg told you he was going to have somebody else bid on that? A. Yes, sir, I have since.

Q. Can you point him out now?

A. It is Mr. Silverstone, I believe.

Q. This gentleman sitting here (showing)?

A. Yes. I didn't know his name at that time; I had never seen the gentleman before at all.

Q. Now, these bids that you have in your hand, Mr. Kettlewell, are all the bids that were sent out at that time?

A. I am pretty certain that they are; yes, sir.

Q. Now, the first bid is to the Fowler Metal Company? A. Fowler Metal Company.

Q. And that was put in by Mr. Silverstone sitting here? A. Yes, sir.

Q. The next bid? A. That is the same.

Q. The next bid was to whom?

A. The Great Western Smelting & Refining Company.

Q. Signed by whom? [277—227]

A. Signed, Great Western Smelting & Refining Company, per Emar Goldberg.

Q. Emar Goldberg is one of the defendants in this case? A. Yes, sir.

Mr. ALLEN.—What is the dates of all these now?

(Testimony of J. A. Kettlewell.)

Mr. RIDDELL.—These are all dated what dates, Mr. Kettlewell?

A. Dated April 11, opening April 13, 1908.

Q. You got the Fowler Metal Company and the Great Western. What is the next bid?

A. American Iron & Metal Company.

Q. Do you know who submitted that bid, do you know how that bid got into the office?

A. No, sir. In the regular way—

Q. Do you know why that bid was sent out?

A. Why, I was requested to send one to the American Iron & Metal Company.

Q. By whom, if you remember?

A. Mr. Goldberg asked me to send one to them.

Q. Now, next is the bid of P. McManus. You say you took that bid to Mr. McManus? A. Yes, sir.

Q. How did Mr. McManus come to bid \$12.60 a hundred pounds, do you know?

A. Well, he said he couldn't handle this at all, and I told him that he might as well put in a bid, he could get it for about \$12.60 and make a profit on it if he happened to get it.

Q. If he happened to get it. The bid of the W. A. Corder Company, you say, was mailed to that concern? A. Yes, sir, mailed to Corder.

Q. The next one is to whom? [278—228]

A. Pacific Engineering Company.

Q. And did they bid?

A. They bid fourteen cents.

Q. Do you know at whose suggestion?

A. Why, I took this to Mr. Stork, representing

(Testimony of J. A. Kettlewell.)

the Pacific Engineering Company, and asked him to bid on it, and he did.

Q. Who suggested the price, do you recall?

A. Why, I suggested the price to him.

Q. Who is the next bid?

A. Schwabacher Hardware Company.

Q. Did they bid?

A. "Unable to supply" they say.

Q. You took that to them personally? A. Yes.

Q. And the next one?

A. The next one is Puget Sound Machinery Depot.

Q. How did that bid reach them?

A. There is no bid; they are unable to supply.

Q. How did that bid reach them, do you know?

A. I took that down to Mr. Garrett and had him make that statement on it.

Q. Who is the next bid?

A. The Seattle Hardware Company.

Q. How did that bid reach them?

A. I took that bid down to Mr. Johnson of the Seattle Hardware, and he told me he couldn't furnish it within the short time, and I told him to state that on the bid.

Q. Was there any other bids?

A. Halladie Machinery Company, "No bid."

Q. How did that bid reach them? [279—229]

A. I am not positive about this, whether this was mailed direct to them or whether I took it down. I knew they wouldn't furnish it because it wasn't in their line.

Q. Mr. Kettlewell, were you a relative of any of

(Testimony of J. A. Kettlewell.)

the persons to whom those proposals were sent?

A. Why, Mr. McManus is a distant relative of mine.

Q. After those proposals were sent out, Mr. Kettlewell, do you know how the Fowler Metal Company's proposal reached the office again?

A. You mean when it was brought in, the bid?

Q. After the proposal was sent out, how did it come back from the office?

A. Mr. Silverstone brought it in.

Q. Mr. Silverstone brought it back up there? Now, what are the prices that are bid on there by the different bidders, Mr. Kettlewell?

A. Fowler Metal Company—

Q. That was Mr. Silverstone's bid? A. Yes.

Q. And they were the successful bidder?

A. Yes, sir.

Q. Now, they bid what?

A. \$12.45 per hundred pounds.

Q. And the next?

A. The next one is Great Western Smelting & Refining Company.

Q. How much?

A. Twelve and a half cents per pound; the American Iron & Metal Company, twelve and three-quarter cents per pound; P. McManus, ten days delivery, \$12.60 per hundred pounds; thirty days delivery, \$12.55 per hundred pounds; W. A. Corder, [280—230] 12.6 cents per pound; Pacific Engineering Company, fourteen cents per pound. That is all.

Q. And those are all the bids? A. Those are all.

(Testimony of J. A. Kettlewell.)

Q. So that of those bids, outside of Corder's and Silverstone's and Goldberg's bids, the only other bids were put in at your suggestion? A. Yes, sir.

Q. The Pacific Engineering Company's bid was for how many pounds?

A. Well, 5,000 pounds is written in here very faintly. I presume he meant to bid on five thousand pounds.

Q. And all the rest of them bid on 50,000, the whole amount? A. Yes.

Q. Now, when did Mr. Silverstone bring back that bid?

A. Why, he brought in the bid about the time of opening, about noon.

Q. When the bids were opened, who all were there, if you remember?

A. Mr. Silverstone was there, I am positive, and Mr. Goldberg and Mr. Corder.

Q. Was anything said at that time?

A. At the time of the opening?

Q. Yes.

A. Why, the bids were opened and handed to these various bidders, and they don't know whether they did or not; I was inside and they were outside of the railing.

Q. Then what happened?

A. It was announced that the Fowler Metal Company was the low bidder.

Q. And then what did they do? [281—231]

A. The award was made to the Fowler Metal Com-

(Testimony of J. A. Kettlewell.)

pany and the proposal given—or the award given to Mr. Silverstone.

Q. Then what did these men who were outside do?

A. Why, Mr. Corder came back about an hour later, I should judge, and made a very strong protest against the award being made to the Fowler Metal Company.

Q. Just tell the jury what he said at that time.

A. Mr. Corder protested against the award being made, and I asked him why. He said, “That man,” as he referred to Mr. Silverstone,—I didn’t know his name at that time,—he says, “That man doesn’t represent the Fowler Metal Company or anybody else, but Jimmie.”

Q. Who did he mean by Jimmie?

A. He meant Goldberg. And I said, “Well, I don’t know anything about it; I can’t help it; the award has been made,” and he said, “It looks mighty funny to me.” I says, “I guess I can’t do anything about it now.” He made a very strong protest against the award baing made. And nothing more was said at that time.

Q. Then what was the next connection your office had with this requisition?

A. The next business that we had was to pay the voucher, the check, when the voucher came through.

Q. The voucher came back, did it?

A. The voucher was prepared and came through in the usual course.

Q. And did you issue a check for it?

A. Yes, sir, a check was issued.

(Testimony of J. A. Kettlewell.)

Q. Now, the check in payment of the materials awarded under this contract, Mr. Kettlewell, were signed by whom?

A. By the Pay Officer in charge there.

Q. Did anybody other than an official have authority to sign those checks? [282—232]

A. No one but the officer to whose credit this money was deposited has authority to sign.

Q. And it was deposited to the credit of whom?

A. It came to the credit of Paymaster Orr.

Q. Now, Mr. Kettlewell, I show you Plaintiff's Exhibit "5" and call your attention to the photographic copies of that first instrument there. Do you know what the instrument is of which this is a photographic copy?

A. Copy of check issued from the navy pay office in payment for this Fowler Metal Company's zinc.

Q. When that check was made out, then what happened?

A. When this check was made out I phoned to Mr. Goldberg and told him that the check was ready, and the check was delivered either to Mr. Goldberg or to Mr. Silverstone, I don't remember which.

Q. What day was it delivered?

A. Delivered June first—no, delivered—delivered—delivered the day it was dated, May the 26th.

Q. May the 26th? A. The day it was dated.

Q. You don't remember to which man it was delivered? A. I couldn't say.

Mr. SCHLESINGER.—You mean May 26, 1908?

A. 1908, yes, sir.

(Testimony of J. A. Kettlewell.)

Q. When the check was delivered?

A. Yes, sir, the day the check was made, as I remember it was delivered.

Mr. RIDDELL.—As you remember, the check was delivered the day it was made.

A. As I remember. It may have been delivered the next day, but [283—233] I think it was the day it was dated. That was the usual procedure and I know we would want to get rid of it as soon as possible.

Q. Now, do you recognize the handwriting on the front of that check?

A. Yes, sir, that is Paymaster Orr's handwriting.

Q. And do you recognize any of the handwriting on the back of the check?

A. I couldn't say anything about that writing. I wouldn't recognize it as anybody's I know; I couldn't say, except, of course, that I recognize the Silverstone endorsement to being similar to the writing on the proposal, is all.

Q. Then, the writing on the proposal is in the same handwriting as the writing endorsed by E. Silverstone on that check? A. Yes, sir.

Q. Now, one thing I neglected to call your attention to, Mr. Kettlewell. I have this bid to the American Iron & Metal Company. Do you know whose handwriting that is?

A. That is my handwriting.

Q. That is your handwriting. And that is the only handwriting that there is on the bid, all the rest is done on typewriter? A. On typewriter.

(Testimony of J. A. Kettlewell.)

Q. After the check was delivered, Mr. Kettlewell, what was the next time you saw any of these defendants about this transaction, or had anything to do with them about the transaction?

A. Why, some time afterwards Mr. Goldberg gave me \$350.

Mr. ALLEN.—How much, three hundred and fifty?

A. \$350. That is only part of the answer. I was stopped before I finished.

Q. Now, at the time Mr. Goldberg gave you this money, Mr. Kettlewell, did you have any conversation with him about it?

A. Yes, he told me what it was for. [284—234]

Mr. RIDDELL.—Well, what did he say?

A. It was for my part of the profits on this zinc, and I called his attention to the excess delivery. I thought we ought to have some on that, too, but he couldn't see it that way and he wouldn't give me any more than the three hundred and fifty, so I let it go at that.

Q. Did he give you any reason why he couldn't give you any more?

A. He said that he had to give Meyer \$500, had to promise him \$500 before the requisition was made, and he would give me that much and he couldn't give me any more than that.

Q. Did you have anything further to do then with that transaction?

A. Well, that finished it up, I think, as near as I can recollect.

(Testimony of J. A. Kettlewell.)

Q. Mr. Kettlewell, I want to call your attention to Plaintiff's Exhibit "5." Now, the last paper on Plaintiff's Exhibit "5" is a photographic copy of what?

A. Photographic copy of the voucher in payment for the zinc on requisition 438.

Q. (Exhibiting folder to witness.) Now, I show you Plaintiff's Exhibits "4," "6," and "7." Plaintiff's Exhibit "4" is a photographic copy of the third of the requisitions in this case.

Mr. KERR.—A photographic copy of what, Mr. Riddell?

Mr. RIDDELL.—Of the third copy of the requisition in this case. And Plaintiff's Exhibit "4," being the navy yard folder for this requisition, is memorandum copy No. 4 of the requisition. In navy pay office folder are copies No. 6 and 2 of the requisition. I call your attention, Mr. Kettlewell, to the fact that this photographic copy of No. 3 and No. 4 are in type-writing and bear the extension of \$625. I show you the navy pay office folder and show you the addition of a cipher after the six hundred and twenty-five in each of those copies, making the total \$6,250. Do you know when [285—235] those changes were made on those two copies?

A. The copy received from the navy yard complete just as it is now and when it was received in our office it bore this extra cipher that you speak of.

Q. That is, the copy that came over from the navy yard had that cipher on it?

A. Yes. The second copy that we received from

(Testimony of J. A. Kettlewell.)

the bureau didn't have the cipher on and I simply added it to make it agree with the other copy.

Q. Do you know why the cipher was added before it got to your office?

A. Why, I don't know why. It is immaterial, I should think. The unit price is what we would be governed by.

Q. Mr. Kettlewell, have you any personal knowledge as to the time when that check was cashed or put in circulation? A. No,—

Mr. SCHLESINGER.—It calls for personal knowledge, if you know of your own personal knowledge.

A. If I remember, the copy shows it was cashed June the first, the photographic copy; that is all I know about it.

Q. You had no personal knowledge on it then?

A. No, sir.

Q. Mr. Kettlewell, when you were indicted on these charges you plead guilty to one count?

A. Yes, sir.

Q. Or to one indictment. And while you were incarcerated the other indictments were dismissed against you? A. Yes, sir.

Q. For what purpose?

A. For the purpose of making application for parole.

Q. Did you receive that parole? [286—236]

A. No, sir.

Mr. SCHLESINGER.—I object to that as immaterial, if your Honor please.

(Testimony of J. A. Kettlewell.)

The COURT.—Proceed.

Mr. SCHLESINGER.—Exception.

Mr. RIDDELL.—I think that is all.

Mr. ALLEN.—That is a very important witness for the Government, and if we think of something more we would like to call him later.

The COURT.—Yes. Cross-examine.

Mr. RIDDELL.—Your Honor, I ask the Court to instruct the jury about certain dates, 9th, 19th and 15th of April, 1908.

Mr. SCHLESINGER.—I suppose that will be covered by the usual instructions given to the jury. We object to this being argued in piecemeal. Let us have it all at once.

The COURT.—You are instructed that the 9th of April, 1908, was on Thursday, the 15th was on Wednesday, and the 23d was on Thursday.

Mr. RIDDELL.—The 11th was on what date?

The COURT.—The 11th was on Saturday.

Mr. RIDDELL.—Thursday was the 9th, Saturday was the 11th and Wednesday was the 15th.

The COURT.—9th, 11th and 15th.

Mr. SCHLESINGER.—What were the other dates?

Mr. RIDDELL.—Those are all I care about.

Mr. SCHLESINGER.—I think we ought have them all.

Mr. RIDDELL.—Mr. Kettlewell, on what date was the award in that case made?

A. The award was made the day the bids were opened.

(Testimony of J. A. Kettlewell.)

Q. And that was what date? A. The 15th.
[287—237]

Q. That was the 15th. Now, when this requisition came over to you from the navy yard it contained a call for what delivery?

Mr. SCHLESINGER.—You mean the 15th of May, Mr. Riddell?

A. 15th of April.

Mr. RIDDELL.—When this requisition came over from the navy yard it called for delivery within how many days after the award?

A. Fifteen days.

Q. Within how many days did the proposals call for? A. Five days.

Q. Well, who made that change?

A. I made that change.

Q. Why? A. We wanted to get—

Mr. SCHLESINGER.—If your Honor please, the reason actuating this witness cannot be used against any one of these defendants. What was in his mind and what his purpose was is not binding upon us, and we object to it, as to why he did a certain thing.

The COURT.—He may give the reason the change was made.

Mr. SCHLESINGER.—Exception.

A. The change was made at the suggestion of Mr. Goldberg, that it would prevent the other people's bidding at all.

Mr. RIDDELL.—Now, the telegraphic information or authority to make the award came on the 9th, and you held that up until Saturday, the 11th?

(Testimony of J. A. Kettlewell.)

A. The awards weren't dated until the 11th.

Q. And they were sent out on the 11th?

A. Those that were mailed were mailed on the 11th.

Q. They were taken out—they were taken out the next week; probably Monday or Tuesday.

Q. And then the award was made? [288—238]

A. Wednesday.

Q. At what time of day? A. At 12 o'clock.

Q. Now, when Mr. Goldberg paid you, what kind of money did he pay you in?

A. I presume most of it was in gold; it was currency, gold or current money. He never paid me with a check or anything like that.

Mr. MORRIS.—What is that about a check?

A. It was not paid in the form of a check or anything of that kind.

Mr. RIDDELL.—I think that is all, your Honor.

On cross-examination by Mr. MORRIS the said witness testified as follows:

Q. Your name is J. A. Kettlewell? A. Yes, sir.

Q. Mr. Kettlewell, how old are you?

A. Forty-six.

Q. And you have lived in the State of Washington since about 1902?

A. 1901, I think it was, that I came here.

Q. And after you came to the State of Washington, or shortly thereafter, you became associated with the Puget Sound Navy Yard?

A. Yes, sir, in January, 1902, I think that I came there.

(Testimony of J. A. Kettlewell.)

Q. January, 1902. And you remained with the Government, rendering service at the Puget Sound Navy Yard, until the year 1906?

A. December, 1906; yes, sir.

Q. In the month of December, 1906, you withdrew from the Puget Sound Navy Yard and became associated with the Paymaster's Department of the Government, which was located in Seattle?

A. Yes, sir.

Q. At the time you became connected with the Paymaster's Department [289—239] that office was located in the Walker Building? A. Yes, sir.

Q. On Second Avenue, the corner of Second and what? A. Second and University.

Q. And you remained with the Paymaster of the United States Navy, or with the Paymaster's office of the United States Navy, until what date?

A. Until March 28, 1911.

Q. March 28, 1911. When you first entered the navy pay office of the Government, who was the Paymaster?

A. Paymaster Orr had charge, as I remember.

Q. You mean at this office here? My question, yes, sir, that is what we are talking about all the time, the Paymaster's office in Seattle and no other.

A. Paymaster Orr was in charge.

Q. You were connected with no other Paymaster's office, were you, outside of the services you rendered at Bremerton?

A. I thought you might have referred to the navy yard.

(Testimony of J. A. Kettlewell.)

Q. I designated it at Seattle. A. Yes, sir.

Mr. MORRIS.—Paymaster Orr?

A. Paymaster Orr; yes, sir.

Q. And your duties under Paymaster Orr were what?

A. I had general supervision of the office force.

Q. Yes, sir. That is sufficient for the present time. You were then known as Chief Clerk, were you not, under Paymaster Orr in the Paymaster's office? A. Yes, sir.

Q. Chief Clerk? A. Yes, sir. [290—240]

Q. That means the Head Clerk?

A. Yes, sir.

Q. You were over all other clerks?

A. Yes, sir.

Q. Now, you remained as Chief Clerk under Paymaster Orr for how long?

A. I don't remember just the time of his detachment. I think it was—

Q. Sir?

A. I don't remember just when he was detached. I think he was there about two years.

Q. Well, that is all right. About two years. And you entered the service of the Paymaster's Department at Seattle in 1906, and you continued to serve under Paymaster Orr for two years. That would take you up to about 1908, would it?

A. Yes, sir, Paymaster Orr was there in 1908.

Q. 1908? A. Yes, sir.

Q. Now, did Paymaster Orr leave the Paymaster's office in Seattle and did someone succeed him?

(Testimony of J. A. Kettlewell.)

A. Yes.

Q. And the officer who succeeded Paymaster Orr was whom? A. Paymaster Ryan.

Q. What was his name?

A. Ryan, R-y-a-n, Ryan.

Q. What was his full name? A. Eugene D.

Q. Sir? A. Eugene D. Ryan.

Q. Was Paymaster Orr or Paymaster Ryan in charge of the navy pay [291—241] office at Seattle on the first of April, 1908?

A. Paymaster Orr, I think, was in charge of the office at that time.

Q. Paymaster Orr. And can you tell this jury just approximately how long Paymaster Orr remained in charge of the office until he was succeeded by Paymaster Ryan?

A. I think that Paymaster Orr left this office in October of—I wouldn't say whether it was 1908, but I think it was in October, 1908, that Paymaster Orr left this office. I am not positive about that.

Q. And where is Paymaster Orr at the present time, do you know? A. No, sir, I do not know.

Q. Then after Paymaster Ryan became the chief of the navy pay office at Seattle, did he continue in such position until your arrest?

A. No, he was succeeded by Paymaster Mell.

Q. Now, Paymaster Ryan was in charge of the navy pay office at Seattle for how long after he succeeded Paymaster Orr?

A. I think he was here about three years, if I remember correctly.

(Testimony of J. A. Kettlewell.)

Q. About three years? A. I think so.

Q. And that would take his services up to about 1911, would it?

A. Well, about the fore part of the year, I think. I wouldn't be positive about those changes in the paymasters. I never paid much attention to them.

Q. Well, your memory is good, is it not, Mr. Kettlewell? A. It is fairly good.

Q. And if you worked under a man for two or three years you ought to be able at this short distance from that time to give the jury approximately the correct time.

A. Well, I would say that Paymaster Orr came to this office shortly [292—242] before—

Q. We have got that now. Just answer this question, unless you want to correct yourself. If you are not satisfied with your evidence.

The COURT.—Proceed with the answer. There is another unanswered question, I understand.

Mr. MORRIS.—I thought the point meant I should not interrupt the witness. I understood he was not answering the question, and I was trying to save the time of the Court.

Q. If your evidence is not correct, according to your present memory, I have no objection to your changing it.

A. You want me to give you the approximate time of all these three paymasters?

Mr. MORRIS.—I would be grateful to you if you would do so.

A. As I remember, Paymaster Orr came to this

(Testimony of J. A. Kettlewell.)

office in the fall of '96. As I recall, he was here shortly before I came here, and I came here December, '96. And he was succeeded by Paymaster Ryan, I think, in the fall of '98. I am not positive about that, but I think it was in the fall of '98. Paymaster Mell came to the office about, I should say, about six months before I left there, six months, approximately six months before the 28th of March, 1911. That is as near as I can recollect it.

Q. Now, let me see if we understand you. Paymaster Ryan was in charge of the pay office for about three years?

A. Well, less than three years.

Q. Less than three years?

A. I think less than three years.

Q. And his services terminated when approximately?

A. I think it was in October preceding the 28th of March, 1911, that he was succeeded by Paymaster Mell. [293—242½]

Q. How long was it after Paymaster Ryan's severance from the pay office that you were arrested?

A. It was on the 28th of March, 1911, that happened.

Q. The 28th of March. Now, I ask you the question, how long after Paymaster Ryan withdrew from the office was it that you were arrested?

A. Well, as I said a moment ago, I think it was in October of the preceding year that he was detached, as near as I recollect.

Q. It was between four and five months, probably?

(Testimony of J. A. Kettlewell.)

A. Yes.

Q. Some place along there?

A. Some place along there.

Q. And at the time of your arrest Paymaster Mell was in charge of the pay office? A. Yes, sir.

Q. And during all of this time you rendered service to these respective paymasters as chief clerk?

A. Yes, sir.

Q. Again directing your attention to the navy pay office at Bremerton, the storekeeper's office over there is called a pay office also, is it not?

A. No, the pay office is usually referred to the paying office in the yard, usually referred to in the yard to the storekeeper's office, that is, general storekeeper's office. A pay officer is in charge of each.

Q. The pay officer had a title of paymaster?

A. Well, he had a title. It may have been Paymaster or Pay Inspector, or whatever his rank was.

Q. Now, in referring to the navy yard officers, I will refer to them in my cross-examination as the storekeeper's office so we will all understand what I mean. Now, during the time that you were [294—243] connected with the storekeeper's office at Bremerton, you were principal clerk?

A. Yes, sir.

Q. And as principal clerk did you have anything to do with the issuing of requisitions?

A. No, sir, I had nothing to do directly with that.

Q. Nothing to do with the preparation of requisitions? A. No, sir.

Q. You knew, during the four or six years that

(Testimony of J. A. Kettlewell.)

you were connected with the storekeeper's office at Bremerton, the general routine that was followed in the preparation of requisitions? A. Yes, sir.

Q. You were thoroughly and *complete* familiar with all of the details relating to a requisition?

A. Yes, I knew how they were prepared.

Q. And you had that knowledge when you withdrew from the *storekeeper's knowledge* of the navy at Bremerton? A. Yes, sir.

Q. And came over to assume the Chief Clerk's position in the Paymaster's office in Seattle?

A. Yes, sir.

Q. Now, after arriving at the Paymaster's office in Seattle, was it your duty, or was it the duty of the Paymaster to examine the requisitions that were received from the storekeeper's office at Bremerton?

A. It was the duty of the Paymaster.

Q. It was the duty of the Paymaster. And it was the duty of each and every one of these respective paymasters to which you have referred?

A. Yes, sir. [295—244]

Q. And especially as to Orr and Ryan?

A. Well, all of them.

Q. All of them? A. Yes.

Q. Mr. Ryan performed those duties, did he?

A. Yes, sir.

Q. Now, when a requisition was originated in the storekeeper's office in Bremerton, and especially such a requisition as is involved in this trial, copies of said requisitions were, by the storekeeper at Bremerton, sent to the department at Washington?

(Testimony of J. A. Kettlewell.)

A. Yes, sir.

Q. Sent by mail as in this particular case the record shows?

A. I beg your pardon. I didn't hear the question.

Q. (Question repeated.) A. Yes.

Q. And at the time that the requisition was sent from the Paymaster's office at Bremerton, or the storekeeper's office, through Washington, a like copy was mailed to the purchasing pay officer here in Seattle? A. Yes; yes, sir.

Q. In other words, a purchasing Paymaster in Seattle received the information within a few hours after it was sent from Bremerton, while the department at Washington did not receive that information until several days thereafter?

A. Yes, that is true.

Q. When that advance information came into your office by a receipt of a copy of the original it furnished you knowledge, of course, as to what the Government was doing in the storekeeper's department thereof? A. Yes, sir. [296—245]

Q. Now, this mail that was received from the storekeeper's office at Bremerton, was it opened by you?

A. Not always, no, sir; either myself or the Paymaster.

Q. But if it was opened by the Paymaster it was thereafter directed to your attention, was it not?

A. It would be all turned over to me.

Q. It would be all turned over to you?

A. Yes, sir, and I stamped it; yes.

(Testimony of J. A. Kettlewell.)

Q. Then, I understand you, it was the general custom for the Paymaster to open it and thereafter to deliver it to you for further attention?

A. Yes, sir.

Q. You mean by opening the mail, he opened it and familiarized himself with it and then handed it to you? A. Yes.

Q. These Paymasters to whom you have referred were officers of what rank, do you know, in the navy service?

A. Why, Paymaster Orr was a—he was a Paymaster with the rank of Lieutenant, I think; and Paymaster Ryan was a pay inspector with the rank of Lieutenant-commander; Paymaster Mell was a Paymaster with a rank of Lieutenant, I think.

Q. They were bonded officers of the Government?

A. Yes, sir.

Q. Now, after a requisition would reach your office, if you acted upon said requisition, you would prepare what is known as proposal? A. Yes, sir.

Q. And those proposals were by you in person, or under your direction, sent to respective suppliers of the different localities? [297—246]

A. They were mailed by the clerk in charge of that particular work, usually.

Q. By the clerk? A. Yes, sir.

Q. Under your supervision, though, was it not?

A. Yes, as the clerk of the office; yes.

Q. Under your direct supervision. You knew what was taking place in each one of these cases, did you not or was it left purely to Paymaster Ryan?

(Testimony of J. A. Kettlewell.)

A. Oh, the Paymaster had direct knowledge of all that was going on, all of the proposals that were sent out, they were all under his direct supervision, and also under my supervision.

Q. Now, accompanying these proposals, and I inclosed in the same envelope, was an extra envelope in which the merchant to whom these proposals were sent, might, if they desired, inclose their bill.

A. Yes, sir.

Q. And return same in that envelope to the Paymaster? A. Yes, sir.

Q. And that was the regular routine procedure?

A. Yes, sir.

Q. On the envelope that was inclosed to the prospective bidders was a designation as to when the purchasing pay officer would open those bids?

A. Yes, sir.

Q. And that was placed thereon for the purpose of notifying all persons who placed bids for an article requisitioned for that they might be present and meet, face to face, those other persons who were bidding against them? A. Yes. [298—247]

Q. So there would be nothing secret about it?

A. That is it.

Q. When those bids were received, as a general thing, who opened them?

A. The Paymaster in charge opened the bids, as a rule.

Q. He is the person who first familiarized himself with the bids that had been submitted?

A. Yes, sir.

(Testimony of J. A. Kettlewell.)

Q. Mr. Kettlewell, previous to your arrival in the city of Seattle, 1901, or 2, had you lived in the East?

A. Yes, sir.

Q. At the age of 19 years you were a telegraph operator, were you? A. Yes, sir.

Q. Or was it fourteen?

A. Well, I was younger than 19; somewhere around seventeen or nineteen.

Q. You were, as a matter of fact, a telegraph operator for a period of 19 years? A. Yes, sir.

Q. In operating the instrument you used your right hand? A. Yes, sir.

Q. And equally well your left hand?

A. No, sir.

Q. You used both hands, did you not?

A. I used my right hand.

Q. Did you not also use your left hand?

Mr. ALLEN.—Your Honor, I can't see any possible relevancy or materiality in that.

The COURT.—Proceed.

A. You mean in using a telegraph instrument that I would use my [299—248] left hand; is that what you mean to ask?

Mr. MORRIS.—Yes, sir; you can say yes or no to that.

A. No.

Q. You invariably used your right hand in operating the instrument? A. Yes, sir.

Q. In sending or receiving a message?

A. In sending a message.

Q. In receiving a message would it be necessary

(Testimony of J. A. Kettlewell.)

for you to put your hands on the keys at times to chop in?

A. Not in receiving a message, not necessarily, no, sir.

Q. Something might arise, might it not?

A. Something might, yes.

Q. At the same time you were doing that you used your left hand in writing, did you not?

A. No, sir.

Q. Is it not a fact that in that means you acquired the ability of writing with either your right or your left hand?

A. No, I can't write with my left hand.

Q. Is it not a fact that you can, with your right hand, write a great many different hands?

A. No, sir.

Q. You say you have but one, but one way of writing, that is right, is it? A. Yes.

Q. While you were connected with the navy pay office is it not a fact that on numerous occasions you opened the bids of merchants and changed and altered those bids?

A. Well, the question would imply three or four different procedures. I never opened any of the bids, but some of them were changed afterwards.
[300—249]

Q. You say to this jury now that you never stealthily opened any bids of any merchants before they had been published by the office, changed same and re-sealed them?

A. It wasn't done in that way, no, sir.

(Testimony of J. A. Kettlewell.)

Q. Never did. It is not a fact that you did, while you were Chief Clerk to the Paymaster, on numerous occasions change and alter *bona fide* bids that had been submitted by merchants of this vicinity and elsewhere? A. Yes, that was done.

Q. Is it not a fact that after those bids had been changed that they passed through the Paymaster's hands? A. Yes, sir.

Q. And those bids were changed and the alterations made in your natural handwriting or figures?

A. No, not always. Not—

Q. Were they sometimes—

Mr. ALLEN.—Let him answer the question.

The COURT.—Proceed. Let him answer.

A. No, they were written in very slowly and carefully in probably what might appear another handwriting. I wrote them in very slowly and carefully to change the figures.

Q. Did you not testify in the case in this court on another indictment, in which this defendant Meyer was on trial, that you changed and altered bids both in the handwriting—that is, in words, letters and figures in your natural hand, not disguised? Answer that yes or no.

Mr. ALLEN.—Your Honor, I submit—

Mr. MORRIS.—I am entitled to an answer yes or no.

The COURT.—If he can answer it yes or no, then he can follow it with any explanation he desires to make. [301—250]

Mr. MORRIS.—I will read it to him. I want him

(Testimony of J. A. Kettlewell.)

to answer now. Read the question.

Q. (Question repeated.)

A. I can't answer that yes or no, because I think it is misleading. I admit freely that I changed these bids. There is no question about that. I am not trying to evade that, but I don't know in what writing—in what way.

Q. I understood you to testify a while ago that you could not write several distinct and separate hands?

A. No, I can't more than any other man.

Q. Well, some persons are so expert with the pen that they can do that.

A. I am not an expert.

Q. Now, I want to ask you this question, and would like to have you answer it. Is it not a fact that while you were Chief Clerk you altered bids that came into your hands and after they were altered, without your handwriting being disguised, they were passed up to and inspected by Paymasters in chief of the office?

A. Yes. Let me qualify it by saying I changed these bids. I don't deny that. And that they were passed to the Paymaster. As to the writing, I paid no particular attention to that; I wouldn't say yes or no about that.

Q. Well, then, answer it now. Is it not a fact, that in some instances your handwriting was disguised and in other instances it was not?

A. Yes, I think that is true.

Q. That is all I want or tried to get you to say.

(Testimony of J. A. Kettlewell.)

And in these altered bids by you passed up to the Paymaster, and by him inspected, which was in your natural hand, your attention was never called to that fact by the Paymaster, was it? [302—251]

A. No, sir.

Q. Mr. Kettlewell, you were arrested on what day? A. March 28, 1911.

Q. March 28th. And shortly after you were apprehended you were released on bail?

A. Yes, sir.

Q. And some days after you were released on bail you secured the services of an attorney, did you?

A. Yes, sir.

Q. Previous to securing the services of said attorney, had you ever met or did you know who he was?

A. No, sir.

Q. Previous to securing the name of said attorney, were you acquainted with a gentleman by the name of Charles F. Hutson? A. Yes, sir.

Q. At that time Mr. Charles F. Hutson was Deputy United States Attorney? A. Yes, sir.

Q. At that time Mr. Hutson was investigating these crooked transactions which the Government had discovered existed in the Paymaster's office in this city? A. Yes, sir.

Q. You were being opportuned at said time by numerous of the secret service operatives and Mr. Hutson to tell the persons who were mixed up in these crooked transactions?

A. They found out all about this, yes.

(Testimony of J. A. Kettlewell.)

Q. I didn't ask you if they found out all about this. Watch this question, now, and answer it.

(Question repeated.)

A. At what time do you mean?

Q. Shortly after your arrest and before you employed Mr. Riddell? [303—252]

A. Yes, just after I was arrested; yes.

Q. Now, in the course of this investigation that was taking place, before Mr. Riddell was employed, several names were mentioned to you by the investigating officers as to their association in connection with these crooked transactions that they then discovered, or had previously discovered? A. Yes.

Q. And Mr. Hutson, the then United States District Attorney, advised you to secure the services of Mr. Charles F. Riddell, did he not?

A. Yes. I would like to say how he did it, though. I asked him in regard to an attorney, and he says, "H," he says, "I can tell you several; anyone of them would be square with you." And I decided in my own mind to take the first man that he mentioned. And several days afterwards I asked him again about it. "Well," he says, "I don't like to recommend anyone," but when I insisted on it finally he told me he thought Mr. Riddell would be all right, and I went down to see him and employed him.

Q. Let me ask you if these questions were not propounded to you by myself on the former trial to which I referred a while ago: "Were you represented by counsel previous to your plea of guilty?" Your answer, "Yes, sir." "Was your attorney in

(Testimony of J. A. Kettlewell.)

court with you at the time you entered your plea of guilty?" "Yes, sir." "Who was your attorney at that time?" Answer: "Mr. Charles F. Riddell." "When did you employ Mr. Riddell to represent you, how long after your arrest?" "Why, within a few days." "Did you know Mr. Riddell previous to the time that you employed him?" Your answer, "No, sir." "You were advised by some one to employ Mr. Riddell?" Your answer, "I wouldn't say that." Question, "Will you say you were not, then?" You answered, "No, I wouldn't say that either." Following with your [304—253] answer, "I would say I was introduced to Mr. Riddell." My question, "By whom?" Answer, "By Mr. Hutson." Question, "By Mr. Hutson, who was then the Deputy United States Attorney that was handling these cases?" You answer, "Yes." That is true, is it not, you so testified?

A. Yes, I think that is correct.

Q. At the other trial?

A. I think that is correct, as near as I can recollect.

Q. Just as I have read the questions and answers to you?

A. I think that is correct, yes, sir. That is true, as I remember it.

Q. How long after you secured Mr. Riddell's services was it, about, that you came into this court and entered your plea of guilty? Just approximately.

A. I entered a plea of guilty on September 18, 1911, at Tacoma.

(Testimony of J. A. Kettlewell.)

Q. In September? A. Yes.

Q. And along in the previous June, or latter part of May, you had secured the services of Mr. Charles F. Riddell? A. Yes, in April, I think it was.

Q. And the Charles F. Riddell to whom you refer is the gentleman who is now prosecuting these defendants? A. Yes, sir.

Q. As special prosecutor in this case?

A. Yes, sir.

Q. Did you answer, Mr. Riddell, that you had pleaded guilty to this particular indictment, had been sentenced, served your time and pardoned?

A. No, I didn't plead guilty to this particular indictment. In fact, I couldn't say now—

Q. I didn't ask you that question.

Mr. ALLEN.—I submit, your Honor, he may answer the question. [305—254]

Mr. MORRIS.—He has answered he didn't plead guilty to this particular indictment and that is the end of it.

The COURT.—Proceed.

Mr. MORRIS.—You were indicted by the grand jury that returned this particular indictment some three or four times?

A. I think it was the same grand jury, yes.

Q. Yes, sir. You were indicted about seven times, were you?

A. I don't remember how many times. There were a number of times.

Q. You never paid any attention to the number of indictments that were laid against you, is that

(Testimony of J. A. Kettlewell.)

correct? A. Yes, that is practically correct.

Q. That is correct. And it is a fact, is it not, that you do not know at the present time, and never did know, the particular charge laid in the particular indictment to which you entered a plea of guilty?

A. Yes, I remember the charge very distinctly in that indictment.

Q. Did I not ask you in the other trial of this case, on cross-examination, if you could state the charge to which you entered a plea of guilty, the number of the indictment, and you answered that you could not, that you entered a plea to the general charge of conspiracy? Now, answer that yes or no.

A. Well, I can't answer that yes or no because it involves several points. You asked me if I knew the number. I don't know the number of the indictment. I know, in a general way, it referred to a tallow transaction, is all I know about it.

Q. It referred to the Peter Brandt tallow transaction?

A. Yes, sir, I am pretty certain that it did.

Q. And that is the only indictment to which you have entered a plea? A. Yes, sir.

Q. Is that right? [306—255] A. Yes, sir.

Q. I mean, have entered a plea of guilty?

A. Yes, that is right.

Q. From your personal knowledge, will you state to this jury how many indictments are now pending against you in this court that was presented by the grand jury which returned this present indictment?

(Testimony of J. A. Kettlewell.)

A. Well, I understand they all have been dismissed.

Q. Have you any personal knowledge as to whether they have or not?

A. I have the information printed in the papers to know, the time I was at McNeil's, that the indictment had been dismissed. There was a news item to that effect, and I know it is a fact; I am told so.

Q. And those indictments were dismissed because you had rendered service to the Government in turning State's evidence, were they not? A. No, sir.

Q. What was the consideration for the dismissal of those indictments within your knowledge, then?

A. No consideration. They were dismissed at my request on Mr. Hutson so that I could enter a plea, or an appeal, or I could apply, rather, for parole, and the rules are, if any pending indictments exist that the parole can't be granted, and I asked him to help me get a parole.

Q. In other words, state it in this way: You had agreed with Mr. Hutson, the gentleman who referred you to Mr. Riddell, that if they would intercede and secure a pardon for you that you would come into court as a Government witness and testify in these respective cases?

A. No, sir, no agreement of any kind made.

Q. Do you say that at the time that the United States Government, [307—256] through its Deputy District Attorney, interceded in your behalf that no inducement, either directly or indirectly, had been made relative to what you should do in return for

(Testimony of J. A. Kettlewell.)

services that you had rendered? A. Yes, sir.

Q. Do you say to this jury that you did not expect the Government, through its District Attorneys, to annul and protect you from further prosecution in any of these alleged indictments to which you had not pleaded guilty? Now answer that.

A. No, I expected no further protection from them. I would like to say what I did expect, what I did think. I was sentenced to one term for conspiracy, and I knew that I had no reasons to suspect, didn't think it was the policy of the Government to repeat, repeatedly try me for the same offense. It was all one offense, you see. There were a great many little indictments under that. It was practically all one offense, and I knew it wasn't the practice of the Government to prosecute more than once.

Q. How do you know it wasn't the custom of the Government to prosecute more than once when this defendant right here is being prosecuted twice within a year?

A. I served my time and answered the Government's requirements. I don't see they could come back at me again; I don't see why they should.

Q. Don't see why they should?

A. No, I have no reason to suspect they would.

Q. You knew, sir, you were indicted for defrauding the Government in the Peter Brandt transaction, did you not? A. I did, and I paid for it.

Q. Pled guilty to it?

A. Pled guilty to it.

Q. You knew you were alike guilty for defrauding

(Testimony of J. A. Kettlewell.)

the Government in [308—257] the Smith-Hunt transaction, did you not?

A. They were all one and the same.

Q. They were all separate and distinct indictments, were they not, and you knew it?

A. Yes, so far as that goes.

Q. You knew that you were guilty in the Lyman-Evans transaction, did you not?

A. All of these I admit to, yes, sir. I have told all about my part of the business from A to Z, and I have served my time, and I am free—

Q. You have served your time in one instance, one charge?

Mr. ALLEN.—This witness should be permitted to answer that question.

The COURT.—Wasn't the answer concluded?

Mr. ALLEN.—It wasn't, your Honor.

The COURT.—Did you want to answer further, Mr. Kettlewell?

A. I say that I know, from the way the Government has handled cases of this kind, that one term of imprisonment wipes out the whole thing. I had no further fear of any further punishment. I had conspired, and I told them about it, and I had made a clean breast of it, and I had served my time and I was through with it. That is all there was to it. I have no further fear on the part of the Government doing anything to me. I had served my time and had nothing further to fear.

Q. You have been informed that the Statute of Limitation for a crime of the kind in question is three

(Testimony of J. A. Kettlewell.)

years, have you not? A. I knew that, yes, sir.

Q. You know it. You know at the present time that you did, while in the Paymaster's Office, commit crimes against which the Statute of Limitations has not run at the present time? [309—258]

A. Yes, sir.

Q. And you know that if the Government saw fit to prosecute you for those crimes, that under the facts within their knowledge with reference to your acts, that they could convict you?

A. I presume they could.

Q. Yes, sir. And, in the face of that knowledge, you state to this jury that you have no fear of being further prosecuted?

A. No, sir; I consider that I have fully repaid—answered the requirements of the law, and I have no fear whatever.

Q. And you have had no assurance from anybody, either directly or indirectly, that has caused you to have such an opinion?

A. No, I would like to explain what I mean.

Q. Answer the question and then explain.

Mr. ALLEN.—Go ahead and explain. Your Honor, may he answer the question? He has started to.

By the COURT.—He may conclude his answer. He answered it directly. Now he may make any explanation he desires.

Mr. MORRIS.—I have no objection to it.

A. I know it has been the custom of the Government not to extend these prosecutions into persecu-

(Testimony of J. A. Kettlewell.)

tions. All these acts really constituted a conspiracy; they were all one, part of one and the same act or the same conspiracy. I plead guilty to one indictment and I felt assured, from what I know of the Government procedure, that one term of punishment would be all that I would be required. No one told me anything about this, except I had this knowledge in a general way, was assured that is what would be done.

Q. How did you acquire the knowledge in a general way you have just imparted to this jury?

A. Well, for instance, I had in mind Mr. Hillman's case, where he had been— [310—259]

Q. You didn't acquire that knowledge from Mr. Hillman's case, did you?

A. Not necessarily, but that was one case came to my mind.

Q. That opinion you acquired ought to be as applicable to a man who had been acquitted of offenses as to one who had served his term, if the conspiracy is general all the way down the line, is that not right?

A. I heard one part of your question—

Q. Mr. Kettlewell, do you remember of a transaction with which you were connected, which passed through the purchasing Paymaster's Office while you were his chief clerk, in relation to a bid that had been submitted by Miles-Piper & Company of this city, and which you raised? A. Yes.

Q. After you raised that bid, it was by you passed up to the Chief Paymaster?

A. Yes, he saw the bid.

(Testimony of J. A. Kettlewell.)

Mr. SCHLESINGER.—In order that we may not have to make that offer in the presence of the jury, because, that would, of course, probably prejudice the case of the Government, may we submit to this Court a list of those transactions, make our offer in writing and have it embodied in the record?

By the COURT.—You have my permission. Submit your offer and then I will consider it.

Mr. SCHLESINGER.—We will do that probably sometime to-morrow. I understand we have the right to cross-examine with respect to the other matters.

(Jury recalled.)

Q. Did you disguise your figures so Paymaster Mell could not recognize them? [311—260]

Mr. ALLEN.—I object. There is no date fixed of this transaction.

By the COURT.—Let him answer. Objection overruled. Exception allowed.

A. It seems all these questions would—

Q. Answer the question, would you please?

A. No, sir, I will not, because I think these are, as I understand it, are within the statute. I don't want to incriminate myself.

Mr. SCHLESINGER.—Within what statute?

A. Limitations. I don't want to incriminate myself in any way.

Mr. MORRIS.—We will appeal to the Court.

By the COURT.—I will state to the witness you needn't answer this question or any other question, except with relation to the testimony concerning the

(Testimony of Mrs. Ethel J. Coombs.)

transaction in issue here, that might tend to incriminate you of any offense. You can simply claim your privilege and the Court will recognize that.

Mr. SCHLESINGER.—On cross-examination of a witness? Then we will have to decline to cross-examine.

[Testimony of Mrs. Ethel J. Coombs, for Plaintiff.]

Mrs. ETHEL J. COOMBS, a witness produced on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. ALLEN.

My name is Ethel J. Coombs. I now reside at 701 North 64th Street, Seattle, and have lived in Seattle about twelve years. In the year 1907 I lived on 11th Avenue. I know Mr. Meyer. Mr. Meyer roomed at my home. As near as I can remember he came to live in my home in the Spring of 1906. I think it was either [312—261] the latter part of February or the first of March. I think he lived there six or perhaps seven months. I think he moved the latter part of September or the first of October, somewhere along there. It has been so long I just can remember. I had a telephone in my home during that time. Mr. Meyer very often used said telephone. I had an opportunity once in awhile to observe him talking to different people over the phone.

Q. Holding conversation with them. Did you ever hear him have a conversation with a man named Goldberg, is one or more—

(Testimony of Mrs. Ethel J. Coombs.)

A. Yes, I remember once of—I don't know whether—once, anyway, I don't know whether it was once or twice, several times I heard him go to the phone and someone would call and he would go to the phone. Perhaps I would answer the phone or perhaps his wife, and he would say, "Is this Goldberg," or—

Mr. SCHLESINGER.—Or what?

A. He would say—someone would answer over the phone. He would say, "Hello, is this Mr. Goldberg?" I have heard that name. I recognize that name by reading it in the paper, so then since this trial has been going on, so it came to me that I had heard it before.

Q. Did you ever hear him make any engagement over the phone to meet Mr. Goldberg?

Mr. SCHLESINGER.—That is leading.

Q. I will put it in another form. Did you ever hear him, over the phone, make any engagement with any person to meet them down town on any occasion?

Mr. SCHLESINGER.—I don't know why we should needlessly consume time of the Court.

By the COURT.—Make the objection.

Mr. SCHLESINGER.—Our objection is the testimony is too remote. [313—262] It relates to a conversation occurring in 1906, and what has it to do with the matter we are now investigating?

By the COURT.—Is that the time, 1906?

Mr. KERR.—Between March and September, 1906.

(Testimony of Mrs. Ethel J. Coombs.)

Mr. ALLEN.—Two years before this transaction.

By the COURT.—He may answer, if that is the only objection.

(Question read.)

Mr. KERR.—I object to that. If she heard any conversation over the phone, she can state the conversation, not the conclusion. She couldn't certainly hear Mr. Goldberg talking over the phone with another gentleman.

By the COURT.—State what he said.

Q. State what he said.

A. What did he say?

Q. What did Mr. Meyers?

Mr. SCHLESINGER.—May I ask the witness a simple question before she answers the question? I want to know from you whether you have, ever in your life, heard Mr. Goldberg talk.

A. Talk, no.

Mr. SCHLESINGER.—How does she know his voice then?

A. No, I didn't know from the other side what was said at all. I simply heard him say, "Yes, I will be down," something of that kind. That is all.

Q. Did you hear any mention on this occasion—

Mr. KERR.—Manifestly leading.

Q. (Continuing.) —of the name of the man, by his using the name of the man whom he was going to meet down town?

Mr. SCHLESINGER.—I object to that as not being binding on the man whose name is supposed to have been used.

(Testimony of Mrs. Ethel J. Coombs.)

By the COURT.—She may state what conversation she heard, what name [314—263] was used by Mr. Meyer at the phone.

Mr. SCHLESINGER.—Exception.

(Question read.)

A. I never heard any conversation, only he said, “All right, I will see you,” or something of that kind. “I will be down town.”

Q. Did you ever hear this conversation with reference to a man by the name of Goldberg, with reference to meeting him down town?

Mr. KERR.—I object to that as leading and suggestive and incompetent and improper.

By the COURT.—Just let her state what was said.

A. It has been so very long, I can’t remember anything more than he answered the phone. He said, “All right, I will be down,” that is all.

Q. In one of these conversations, in which you knew some man whom he addressed as Goldberg—a man whom he, Mr. Meyer, addressed as Goldberg, at the other end of the line,—did you in any one of these conversations hear Mr. Meyer say that he would meet this man down town?

Mr. SCHLESINGER.—I object to that as not being in any wise binding upon the defendant, Goldberg.

By the COURT.—She may answer it. Objection overruled. Exception allowed.

A. No, I simply heard—he would say “Yes” or “No”; that would be all on the phone in that way.

Mr. ALLEN.—This is one of the permissible occa-

(Testimony of Mrs. Ethel J. Coombs.)

sions upon which a man may ask a question of his own witness, that is in the case of surprise. This witness came to my office and told me one story—

Mr. KERR.—I object, in the presence of the jury.

By the COURT.—The jury is instructed not to pay any attention to it. [315—264]

(Question read.)

A. Well, I don't know as he said to Mr. Goldberg particularly, but I have heard him speak to others and say, "Well, all right," or "I will meet you," and say a word like that, but I don't know whether it was particularly to Mr. Goldberg or not, but I have heard Mr. Goldberg's name over the phone, heard him answer.

On cross-examination by Mr. MORRIS the said witness testified as follows:

Q. It is not a fact that from the time Mr. Meyers and his wife left your house, there has been no speaking acquaintance between you and either Mr. Meyers or his wife?

A. You say there hasn't? Did you ask me out there—

Q. Yes.

A. No, I haven't never had any conversation with Mr. Meyers.

Q. You don't speak as you pass by on the street?

A. No, we don't.

Q. There is ill-feeling existing between you and Mr. and Mrs. Meyers?

A. Yes, it must be. We haven't never spoke or never had any occasion to meet since he left there.

[Testimony of F. D. Stewart, for Plaintiff.]

F. D. STEWART, a witness produced on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. ALLEN.

My name is F. D. Stewart. I reside at Kennidale. I have lived here in King County eight years. I am not connected with the Pacific Engineering Company now. I was employed during the year 1908 with [316—265] the Pacific Engineering Company.

Q. I will call your attention to Plaintiff's Exhibit No. 7, the same being the folder enclosing the copy of the requisitions, and also the bids or the proposals in this requisition No. 438. Take a look through those proposals and see if you can find the proposal of your concern. Do you recognize that?

A. Yes, sir.

Q. I call your attention to that particular part of it which reads now, "Fifty thousand pounds of zinc with the Railroad Company," and other descriptive matter, and the pencil notation out here at the right, the figure "14" under the head "cents," and the sum of "\$5000." Those are pencil notations. Who made those notations on that pad? A. I did.

Q. I call your attention to the first figure of fifty thousand pounds. What was the condition of that, if you recall, at the time that that bid was made?

A. I bid on five thousand pounds there, specified it out here. I bid on five thousand pounds on that bid, five thousand pounds.

Q. That is your pencil notation?

(Testimony of F. D. Stewart.)

A. Yes, sir, specified for five thousand pounds.

By the COURT.—Has that been identified?

Mr. ALLEN.—It is admitted in evidence.

By the COURT.—What exhibit is that?

Mr. ALLEN.—That is Exhibit “7.”

On cross-examination by Mr. SCHLESINGER the said witness testified as follows:

I bid at the rate of fourteen cents. I regarded that as a legitimate profit. I always put in a legitimate profit. [317—266]

On redirect examination by Mr. ALLEN the said witness testified as follows:

Q. Any profit you could get, you would consider legitimate, wouldn't you?

Mr. SCHLESINGER.—We object to that, if your Honor please.

On recross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Do you know how much zinc you had on hand at that particular time?

A. I don't know at that particular time; no sir.

[Testimony of Mrs. Sarah E. Rubenstein, for Plaintiff.]

Mrs. SARAH E. RUBENSTEIN, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. ALLEN.)

My name is Mrs. Sarah E. Rubenstein. I live at 1900 Spruce Street. I am a widow. The name of

(Testimony of Mrs. Sarah E. Rubenstein.)

my husband was Jacob Rubenstein. Just prior to his death he was connected with the American Iron & Metal Company. It was a corporation. I was an officer in that corporation. I was the secretary. Mr. Rubenstein was the president. My husband was in business at 1006 First Avenue South, in this city. His business was that of buying up junk and new and old—whenever he got a chance, jobbing lots or buying places and selling. My husband did not keep any stock down there, any quantities of new [318—267] goods, for which he would peddle in the market or sell in the market. He confined his operations to old goods. He died 1910.

Q. Was the business of your husband in 1908, in size or amount of money he had in the business, was it substantially what it was in 1910? A. No, sir.

Mr. SCHLESINGER.—We object to that as calling for the opinion of the witness, incompetent, irrelevant and immaterial, and nowise binding upon the defendant.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

Mr. SCHLESINGER.—And it refers to the affairs of a corporation, of which this lady was simply secretary.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. Not quite as much.

Q. It was not quite as much in 1908 as it was when he died, is that the idea? A. No.

Q. How big was it then in 1910, what was the

(Testimony of Mrs. Sarah E. Rubenstein.)

amount of the estate?

A. Well, the estate was supposed to be—

Mr. SCHLESINGER.—We object to that as absolutely immaterial.

By the COURT.—She testified with relation to a corporation, and you asked with relation to the individual estate.

Q. Who else was interested in the corporation besides your husband and yourself, anybody?

A. Nobody, but the most of it was attended to by himself. I didn't attend to it but very little.

Q. Did anybody else have any stock in the company? It was his concern, wasn't it?

A. No, sir.

Q. With that explanation, state what the value of all the property [319—268] of the company was when he died?

Mr. SCHLESINGER.—I object to that upon the grounds it is absolutely incompetent, irrelevant and immaterial, not within the issues here and in no wise binding upon any of these defendants.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED. It is all for the jury.

A. Supposed to be about \$6,000.

Q. That was all of the assets of the concern?

A. That is all there were.

Q. In 1908 it was less than that? A. Yes, sir.

Q. Did your husband ever carry any stock down at your place, or over at Goldberg's, or anywhere else, in zinc plate, \$6,000 worth of new zinc plate?

A. Never.

(Testimony of Mrs. Sarah E. Rubenstein.)

Mr. SCHLESINGER.—Will you show her that paper?

Mr. ALLEN.—I am preparing to.

Q. Can you read, Mrs. Rubenstein? A. Yes.

Q. Take a look at this, which purports to be—it is from Plaintiff's Exhibit "7," the proposal of the American Iron & Metal Company, which is written, as you will see, with a typewriter.

Mr. SCHLESINGER.—Let her read it out loud, if she can.

A. Five thousand pounds zinc, old sheet boiler plates.

Q. Read at the bottom there, see the way the signature is made. Do you see how that is made, down here, how that is signed?

A. Yes, that is American Iron & Metal Company.

Q. What is it written with, that is what I am asking you? A. Typewriter.

Q. Did you have a typewriter down there in 1908? [320—269] A. Never had any typewriter.

Q. Did you ever hear of Mr. Rubenstein filling out a bid for his company, using a typewriter to fill out one of these? A. No, sir.

Mr. SCHLESINGER.—We object to that. How can that be in any wise material.

By the COURT.—It isn't going to be pursued any further, is it?

Mr. ALLEN.—Just that point.

Mr. KERR.—We move to strike it out on the ground it is absolutely immaterial.

(Testimony of Mrs. Sarah E. Rubenstein.)

By the COURT.—MOTION DENIED: EXCEPTION ALLOWED.

Q. Do you know Mr. Goldberg, this man sitting back? A. Yes, sir.

Q. State the business or other relations of your husband and Mr. Goldberg, for the year 1908, or prior thereto, if you know them.

Mr. SCHLESINGER.—I object to that as absolutely immaterial, incompetent and irrelevant and in no wise binding. What has that to do with this case.

By the COURT.—She may answer. OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. I don't know exactly 1908, but I know Mr. Goldberg used to give my husband money to buy, where he couldn't buy, or my husband found a place and he didn't have the money, and he gave him the money to buy.

Mr. SCHLESINGER.—We move to strike out the last part of the witness' answer as not being in any wise responsive. The question of counsel was properly confined to 1908.

By the COURT.—MOTION DENIED: EXCEPTION ALLOWED.

Q. How long were they in close association, in this way, in a business way, to your knowledge? [321—

270] A. To my knowledge is about from 1907.

Q. Down through 1907 and 1908, and on down until he died? A. Yes.

On cross-examination by Mr. SCHLESINGER the said witness testified as follows:

Mr. SCHLESINGER.—Not waiving, of course,

(Testimony of Mrs. Sarah E. Rubenstein.)

any of our objections heretofore made.

Q. Did Mr. Goldberg ever personally lend your husband a single ten cent piece? Weren't moneys loaned to your husband by the Great Western Smelting & Refining Company?

A. That is what I—Mr. Goldberg claimed that he loaned him money.

Q. They really were loaned by the Great Western Smelting & Refining Company?

A. That was loaned in 1910 only, but I know that Mr. Goldberg loaned—

Q. And the Great Western Smelting & Refining Company is having some controversy—I don't care to have the nature of it exposed here—but has it some controversy with your concern over business matters? Just yes or no. A. Yes.

On redirect examination by Mr. ALLEN the said witness testified as follows:

Q. I call your attention to part of Plaintiff's Exhibit No. 19, the same being a copy of the proposal submitted in the name of the American Iron & Metal Company, of date March 18, 1908, and bearing a certain signature. Take a look at that. Is that the signature of your husband, can you tell there, Mrs. Rubenstein? A. Yes, sir. [322—271]

Q. That is your husband's signature?

A. Yes, sir.

Mr. SCHLESINGER.—Read on the other side.

Mr. ALLEN.—On the other proposal?

Mr. RIDDELL.—No, the other is just typewritten, no signature on it.

(Testimony of Mrs. Sarah E. Rubenstein.)

On recross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. I understand that you do identify that as your husband's signature? A. Yes, sir.

Q. There can't be any question about that, can there?

A. Not on this one. I think not on this one.

[Testimony of W. G. Johnson, for Plaintiff.]

W. G. JOHNSON, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. RIDDELL.

My name is W. G. Johnson. I live at East Seattle. I am a clerk for the Seattle Hardware Company. I have been with them sixteen years. In 1908 my position with them was that of salesman. I had charge of the navy business there.

Q. I show you a proposal of the Seattle Hardware Company, being a part of Plaintiff's Exhibit "7." Do you recognize any of the handwriting on that?

A. That is mine.

Q. When did you put that on there—do you recall the occasion?

A. Why, I put it on there at the time I received the proposal and opened it, from the navy pay office.

[323—272]

Q. You remember the occasion? A. Yes, sir.

Q. Why didn't you bid on that?

A. Because I couldn't furnish delivery within five days.

(Testimony of W. G. Johnson.)

Q. Could you have furnished delivery within fifteen days? A. No, sir.

On cross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Do you know how much stock you had on hand on that date of that kind of material?

A. No stock at all, sir.

Q. Do you know when you did have any of that material on hand before that time, any quantity?

A. That quantity?

Q. Any quantity?

A. If we had any at all, it would probably be about five hundred pounds.

Q. You hadn't had any for about a year, had you, in any great quantity? A. No quantity at all.

On redirect examination by Mr. RIDDELL the said witness testified as follows:

Q. Did you ever have any in any great quantity?

A. No, sir.

On recross-examination by Mr. MORRIS the said witness testified as follows:

Q. When you answered Mr. Riddell, I understood you couldn't have delivered five thousands pounds of this zinc in fifteen days. You [324—273] said no? A. Not five thousand pounds.

Q. You couldn't have delivered five thousand pounds in fifteen days?

A. I could have, providing it had been in Frisco stock. I couldn't have from Seattle.

2
No. 2413

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FOUR VOLUMES.)

EDWIN F. MEYER and EMAR GOLDBERG,
Plaintiffs in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME II.
(Pages 353 to 704, Inclusive.)

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Northern Division.

FILED

JUL 1 - 1914

No. 2413

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FOUR VOLUMES.)

EDWIN F. MEYER and EMAR GOLDBERG,
Plaintiffs in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME II.
(Pages 353 to 704, Inclusive.)

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Northern Division.

(Testimony of W. G. Johnson.)

Q. The question was not limited to Seattle, though?

A. He didn't specify five thousand pounds.

Q. The question Mr. Riddell asked you was this: If you could have delivered the five thousand pounds, in fifteen days, and you replied, "No." Now, I understand you don't mean to say to the jury, if you had received the award, or had bid for five thousand pounds of zinc, and the award had been made to you, you know you could have telephoned east, or to San Francisco, and if the zinc had been either place, received it within fifteen days?

A. Yes, sir, I could in five thousand pound quantity.

Q. You mean you couldn't have received it in the local market? A. Not in the local market.

Q. That is, you didn't know where you could find it in the local market, that is what you mean to say?

(No answer.)

Q. You didn't answer the last question.

A. Well, if it had been in the local market, I would know where to find it.

Q. If somebody had had five thousand pounds here, and they were willing to have sold it to you, then you could have bought it? A. Yes, sir.

Q. Then you could have delivered it? My point is directed especially to the delivery in fifteen days.

[325—274]

On redirect examination by Mr. RIDDELL the said witness testified as follows:

Q. Do you mean you couldn't have delivered it within five days, because there wasn't fifty thousand

(Testimony of W. G. Johnson.)

pounds in town? A. Yes, sir.

Q. You know that, do you?

A. As far as we would find out, there wasn't fifty thousand pounds in town.

W. G. JOHNSON, recalled as a witness on behalf of the plaintiff, further testified as follows:

(By Mr. RIDDELL.)

Mr. RIDDELL.—In matters of this kind, Mr. Johnson, what was the amount of a quantity of 50,000 pounds of $\frac{1}{2}$ by 6 by 12 zinc, what was the difference between the wholesale price and the market price, approximately?

Mr. SCHLESINGER.—One moment, your Honor, please. It hasn't been shown this witness has ever dealt, or rather his employer, in 50,000 lots. Another thing, it should be confined to the particular time, and he must be shown to be familiar with the conditions governing the sale or purchase of zinc at that particular time, especially in a case where prices fluctuate.

The COURT.—Get your objection in the record. Have you objected yet?

Mr. SCHLESINGER.—Yes, your Honor.

The COURT.—Let him say whether he knows.

Mr. SCHLESINGER.—Exception.

Mr. RIDDELL.—Do you know what the retail price, what the raise [326—275] over the wholesale price the retail price was on a bid for 50,000 pounds of zinc on or about the first day of April, 1908?

A. No, I don't at that time. I don't know what

(Testimony of W. G. Johnson.)

the cost of zinc was at that time.

Q. I didn't ask you that, I asked you if you knew what the bid, what the price would have been over the—the difference between the wholesale price and the retail price at that time.

Mr. SCHLESINGER.—I submit, your Honor please, he has already answered that question.

The COURT.—I think the witness must show he knows what the wholesale and retail price was before he can testify to the jury intelligently as to the profit.

Mr. RIDDELL.—Well, I am asking him, your Honor, if he knows the difference between the two. Now, I will connect that up and show what the whole-sale price was at that time by a witness who was in that business. This man was in the retail business at that time.

The COURT.—If he don't know, why, of course, he can't tell.

Mr. RIDDELL.—Do you know?

A. I know what the profit would be on the transaction.

Q. I will ask you what that profit was.

Mr. SCHLESINGER.—Now, if your Honor please, does the question call for his probable profits or the probable profit of a factory in Illinois, or Schwabacher's profit? Why, I submit it is not a proper question, clearly objectionable, and we do object to it on the ground it is not binding upon the defendant. He said he didn't know conditions.

The COURT.—The question seems to elicit his profit, or profit of his firm. What do you generally

(Testimony of W. G. Johnson.)

recognize the profit of the community, or the city, would be, is another matter.

Mr. SCHLESINGER.—At that time. [327—276]

Mr. RIDDELL.—That is it. Answer that question.

A. Be about a cent a pound.

Q. Be about a cent a pound? A. Yes, sir.

Mr. RIDDELL.—You may take the witness.

(By Mr. SCHLESINGER.)

Q. Had you sold any zinc at that time, or about that time, in 5,000 pound lots?

A. I had sold a shipment to the yard at that time, yes.

Q. Did you regard 12 cents a pound as a reasonable figure at that time?

A. Basing it on that—on what we paid for it, it was.

Mr. SCHLESINGER.—That is all.

[**Testimony of F. D. Stewart, for Plaintiff
(Recalled).**]

F. D. STEWART, recalled as a witness on behalf of the plaintiff, further testified as follows:

(By Mr. RIDDELL.)

Q. You were asked concerning this bid. Do you recall this particular transaction (handing paper to witness)?

A. Why, no, sir, not that particular transaction. I know there was something peculiar about it. I didn't fill in the bottom part of the bid here (showing), the exact days time delivery.

Q. You did not fill that in? A. No, sir.

(Testimony of F. D. Stewart.)

Q. And so you say you know there is something wrong with it?

A. I know there is something wrong with it, yes, sir.

Mr. RIDDELL.—You may take the witness.

Mr. SCHLESINGER.—That is all. There is no further questions. [328—277]

[Testimony of I. B. Hoopes, for Plaintiff.]

I. B. HOOPES, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. RIDDELL.—My full name is Isaac D. Hoopes. I live at Menett, Washington. I am occupied in the navy yard, manufacturing department at present. I know the defendant Goldberg. I worked for the Great Western Smelting & Refining Company in Seattle; about five years ago, I left them; I was there about a year. I left them in the early part of 1908, about the first of May, I think it was.

Q. While you were there did Mr. Corder keep any of his materials in the warehouse of the Great Western Smelting & Refining Company?

Mr. VANDERVEER.—Object as not material, if the Court please.

The COURT.—He may answer. Note an exception.

A. Yes, sir, there was some there.

Q. What were those materials?

Mr. SCHLESINGER.—We object upon the

(Testimony of I. B. Hoopes.)

ground it is immaterial, incompetent and irrelevant, nothing to do with the issues here.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

Mr. VANDERVEER.—And prior to the first of April, 1908?

Mr. SCHLESINGER.—Too remote in point of time.

The COURT.—Proceed.

A. Zinc plate, I guess they call it.

Mr. RIDDELL.—Zinc plate?

A. Yes, sir.

Q. Where was it kept, Mr. Hoopes?

A. In the warehouse, outside the office.

Q. What else, if anything, did Mr. Corder keep there? [329—278]

A. I don't know that he kept anything else.

Q. That is the only thing you knew of his keeping there? A. Yes, sir.

Q. Do you know whether he did or did not keep anything else there?

A. Not to my knowledge, no, sir.

Q. How often were you in the warehouse during your employment there?

A. That is pretty hard to say. I went in and out. Sometimes when I had nothing else to do I would go out there and see some of the men; sometimes I had to go out and see about orders; not frequently.

Q. Do you know to who any of that zinc was sold?

A. Well, I think they sold some to the navy yard.

Mr. MORRIS.—You were asked if you knew.

(Testimony of I. B. Hoopes.)

You can answer that first yes or no.

A. Pardon me. Yes, I think so.

Mr. RIDDELL.—You know. Well, all right, now say to whom it was sold?

A. To the navy yard, and they jobbed it out to others in small lots, of course. I don't remember to whom particularly.

Q. You say they did. Who do you mean by they?

A. Well, the house, the Great Western sold it.

Q. You mean they sold Mr. Corder's zinc?

A. I mean that all that went out from there on Great Western orders, went out that way.

Q. What I mean—am I misunderstanding you? Do I understand you that Mr. Corder's zinc went out on Great Western orders?

A. I am not sure about that.

Q. Do you know where Mr. Corder's zinc went to?

A. No. His zinc wasn't marked from any other zinc.

Q. How do you mean?

A. There was no distinguishing mark between his—

Mr. SCHLESINGER.—Did you say his, Corder's, zinc was not marked [330—279] by distinguishing marks?

A. Yes, sir, not to my knowledge.

Mr. RIDDELL.—It was not marked to distinguish it. Was it all put together?

A. Yes, sir.

Q. Well, now, Mr. Hoopes, after that zinc was put

(Testimony of I. B. Hoopes.)

together was it possible to tell which was Corder's and which was the Great Western's?

A. Only from the book, how much had been sold by the Great Western.

Q. What position did you occupy down there, Mr. Hoopes?

A. I was clerk, stenographer and bookkeeper, and general clerk.

Q. In that position did you acquire any knowledge of the transactions relating to this zinc?

A. I don't know—I don't understand what you mean by that.

Q. Well, in your office down there you were employed as a clerk? A. Yes, sir.

Q. Now, as a clerk down there did you learn anything about when this zinc was bought and who bought it and how it was paid for, and where it went to, and so on?

Mr. SCHLESINGER.—It seems to me, your Honor, that the records which are now before these gentlemen certainly must be regarded as the best evidence, and are the best evidence, records of the books here.

The COURT.—If he knows he can tell.

Mr. SCHLESINGER.—Exception.

A. Well, I could only—I don't know whether I could answer.

Mr. RIDDELL.—Do you remember when any of this zinc was bought?

A. No, not definitely. There was more than one purchase made while I was there.

(Testimony of I. B. Hoopes.)

Q. Do you remember whether anybody besides the Great Western Smelting & Refining Company paid for any part of that purchase? [331—280]

Mr. SCHLESINGER.—Well, I object to that as being absolutely immaterial. We may as well concede now that they paid for all of it and re-sold half of it to one of the defendants, which they have the legal and moral right to do.

Mr. RIDDELL.—I don't think they did just exactly what they had exactly the legal and moral right to do.

The COURT.—If he knows he can say so.

Mr. RIDDELL.—I will put it this way in leading form.

Q. Did Mr. Corder pay for any of that zinc?

Mr. SCHLESINGER. I object to that as absolutely immaterial, incompetent and irrelevant, whether he paid for it or didn't pay for it. He might have bought it on credit and subsequently paid for it.

Mr. SCHLESINGER.—I suppose it refers to the original purchase in the east?

Mr. RIDDELL.—Yes, sir.

Mr. SCHLESINGER.—We renew our objection as absolutely immaterial.

The COURT.—If the witness personally knows he can tell.

Mr. SCHLESINGER.—The point of my objection, your Honor please, is it is immaterial whether Mr. Corder bought this from the eastern factory or

(Testimony of I. B. Hoopes.)

whether he bought one-half from the Great Western Smelting Company.

The COURT.—Sure, I understand your position, and let an exception be noted, and he may answer if he knows.

A. Yes, sir, Mr. Corder paid for half a car.

Mr. RIDDELL.—Paid for half a car?

A. Yes, sir.

Q. Now, to whom was that half carload sold? I will put it this way: Was any of that carload sold to the navy yard?

A. Yes, I presume that went out of that load, out of that car. I [332—281] don't know definitely; I can't say definitely just what car, although they always carried some stock.

Mr. RIDDELL.—I offer these for identification, please.

(Papers referred to marked Plaintiff's Exhibit "21" for identification.)

Q. I show you Plaintiff's Exhibit "21" for identification. Do you know whose are those signatures on those checks?

A. Mr. Goldberg's signatures.

Q. That is Mr. Goldberg, this defendant?

A. Yes, sir.

Mr. RIDDELL.—We offer those checks in evidence as Plaintiff's Exhibit "21."

Mr. SCHLESINGER.—What is the purpose of the offer?

Mr. RIDDELL.—Those are the checks paying for the zinc and getting it back again.

(Testimony of I. B. Hoopes.)

Mr. SCHLESINGER.—Paying for the zinc and getting the zinc back again?

Mr. RIDDELL.—Paying for the zinc and the proceeds of the sale to the navy yard.

Mr. SCHLESINGER.—Oh. What are these two checks here, proceeds of sale, Mr. Riddell (showing)? Step over here a moment. I think you included too many.

Mr. RIDDELL.—Let the record show, your Honor, that we have had two checks, checks number 4973 and 4972 marked for identification as Plaintiff's Exhibit "21," and these other two I will offer.

The COURT.—4972—

Mr. RIDDELL.—Checks number 4972 and 4973 are marked for identification as Plaintiff's Exhibit "21." I will withdraw the former offer.

Mr. SCHLESINGER.—Here is another one now.

Mr. RIDDELL.—These two checks are both dated June 1st, 1908, [333—282] one to E. Goldberg and the other to Emar Goldberg.

Mr. SCHLESINGER.—And signed by Great Western Smelting Company?

Mr. RIDDELL.—And signed by Great Western Smelting & Refining Company by Emar Goldberg.

Mr. SCHLESINGER.—Yes, sir.

Mr. RIDDELL.—Now, two checks, one of May 15, 1908, number 4946 to the Star Steamship Company, in the sum of \$246.15, and the other dated June 2d, 1908, number 4978, to W. A. Corder Company, in the sum of \$4974.31, which has been identified by the witness. We offer those in evidence as Plain-

(Testimony of I. B. Hoopes.)

tiff's Exhibit "23." Mark those two.

(Papers referred to marked Plaintiff's Exhibit "22" for identification.)

Mr. SCHLESINGER.—That shows that check was paid, does it not, Mr. Riddell?

The COURT.—Exhibit "22" and "23."

Mr. RIDDELL.—As exhibit "23."

Q. I show you three papers which have been pinned together and marked for identification Plaintiff's Exhibit "22." Do you know what those papers are?

Mr. MORRIS.—Plaintiff's Exhibit "23" is what?

Mr. RIDDELL.—Is the two checks, one paying for half of the freight and the other paying Corder Company half of the proceeds.

Mr. MORRIS.—Arising from the sale?

Mr. RIDDELL.—Yes, sir, arising from the sale.

A. Yes, sir.

Q. What are they?

A. They are ledger sheets from the Great Western.

Q. Ledger sheets from the Great Western Smelting & Refining Company? A. Yes, sir.

Q. Who kept them? [334—283]

A. I did part of the time.

Q. Who was the manager at that time?

A. Mr. Goldberg.

Q. And you kept it under his direction?

A. Yes, sir.

Mr. RIDDELL.—Now, we offer this in evidence as Plaintiff's Exhibit "22."

(Testimony of I. B. Hoopes.)

The COURT.—What are those?

A. Those are ledger sheets from the Great Western Smelting & Refining Company.

Mr. SCHLESINGER.—What number, Mr. Riddell?

Mr. RIDDELL.—“22.”

The COURT.—Any objection?

Mr. MORRIS.—Well, give us a little time, will you please? Perhaps we won't object if you explain to us the purpose of it.

Mr. RIDDELL.—I am just going to have this identified and add it to Plaintiff's Exhibit “22.”

Q. Can you identify that (handing another paper to witness)?

A. Yes, sir, that is another sheet from the Great Western's ledger.

Mr. RIDDELL.—I will just ask to add this to “22.” Mark this Plaintiff's Exhibit “24” for identification. (Papers referred to marked Plaintiff's Exhibit “24” for identification.)

Q. I show you paper marked for identification Plaintiff's Exhibit “24.” Do you recognize the signature on that?

A. Yes, sir, that is Mr. Goldberg's.

Q. Defendant Goldberg's signature.

The COURT.—What is that?

Mr. RIDDELL.—It is a check. I didn't want to identify it until it was admitted in evidence. I just wanted to have it marked for identification. [335—284]

The COURT.—Well, I wanted to get it.

(Testimony of I. B. Hoopes.)

Mr. RIDDELL.—Well, I will read it, if you care for it. Now, I understand that Plaintiff's Exhibit "23" has been admitted without objection.

Mr. SCHLESINGER.—This one check here, Mr. Riddell, this 43 check?

Mr. RIDDELL.—Plaintiff's Exhibit "22," your Honor, I had just three papers and added one more to it. Counsel, I think, has no objection to the introduction of the three papers. One of the papers they will hold out for a moment, so that I will ask to have the one paper marked as Plaintiff's Exhibit "22" for identification and not offer it in evidence at this time, and plaintiff's exhibit—

The COURT.—You have four sheets as exhibit "22." You desire to withdraw one and have three sheets?

Mr. RIDDELL.—I desire to leave one as exhibit "22," because that particular one has already been marked as exhibit "22," and I will ask to have the other three marked Plaintiff's Exhibit "25," is it not?

The COURT.—Yes, sir.

Mr. RIDDELL.—Three sheets. There were four sheets in exhibit "22." The one remains as exhibit "22" for identification and is not offered in evidence as yet.

The other three are made exhibit "25" and now offered in evidence and received without objection.

The COURT.—Number "25" admitted. Proceed.

(Papers referred to received in evidence and marked Plaintiff's Exhibit "25.")

(Testimony of I. B. Hoopes.)

(Plaintiff's identification "23" received in evidence and marked Plaintiff's Exhibit "23.")

Mr. RIDDELL.—I ask to have this book marked Plaintiff's Exhibit for identification "26."

(Book referred to marked Plaintiff's Exhibit "26" for identification.) [336—285]

The COURT.—What are those?

Mr. RIDDELL.—Book of invoices of the Great Western Smelting & Refining Company.

Q. I show you book and papers, which has been marked Plaintiff's Exhibit "26" for identification. Do you know what they are?

A. Yes, sir, they are copies of invoices.

Q. When you sent out an invoice what did you do?

A. We made three copies, I believe.

Q. Did you keep one copy? A. Yes, sir.

Q. And they became the records and files of your office? A. Yes, sir.

Q. And became your original office records of that transaction? A. Yes, sir.

Q. And this is that book? A. Yes, sir.

Mr. RIDDELL.—Mark this Plaintiff's Exhibit "27."

(Instruments referred to marked Plaintiff's Exhibit "27" for identification.)

Q. I have marked this for identification Plaintiff's Exhibit "27" and show you that. Do you know what that is? Well, I just ask you—that is a similar book to "26," is it not? A. Yes, sir.

Mr. RIDDELL.—I show you plaintiff's exhibit for identification "28."

(Testimony of I. B. Hoopes.)

The COURT.—What is that?

Mr. RIDDELL.—What is this?

A. It is the receiving-book.

Q. Sir? A. No, these are—

Mr. SCHLESINGER.—We can save time. [337—286] A. This is the sales book.

Mr. RIDDELL.—Of the Great Western?

A. Yes, sir.

Mr. SCHLESINGER.—Mr. Riddell, so as to expedite the matter, let us submit these books are the property of the Great Western Smelting Company, and that you had possession of them between two to three years, since March, 1911, in your possession.

Mr. RIDDELL.—I won't go back that far.

The COURT.—Just agree on what you want to go in this case.

Mr. SCHLESINGER.—May, 1911, is the admission, that right?

Mr. SHIPLEY.—Been in their possession since that date.

Mr. KERR.—They don't need to identify them by this witness; we will admit them; we gave them to them.

Mr. RIDDELL.—Very well.

(Instruments referred to received in evidence and marked Plaintiff's Exhibit "28.")

Mr. RIDDELL.—Your Honor, the matter which the Court took up early this afternoon, and that the Court does not intend to determine until to-morrow morning, offers a surprise to the Government, and we are hardly in a position to continue any further

(Testimony of I. B. Hoopes.)

at this time. We could identify these, but if counsel will admit them I think we can adjourn now and get together and have these things in here by to-morrow morning and start right fresh in the case, if that is satisfactory to the Court.

The COURT.—Will you get together and check over the records?

Mr. RIDDELL.—Yes, your Honor, and have them ready by to-morrow morning.

Mr. SCHLESINGER.—The trouble has been in this, we haven't our books; we are compelled to come here at unseemly hours and examine them. Mr. House has been very accommodating and has agreed to come [338—287] with us to-morrow evening and go over this matter with us.

The COURT.—I am willing to adjourn now if you will devote the balance of the day in getting these records in the order in which they ought to go in.

Mr. RIDDELL.—Yes, your Honor. We will fix that up.

I. B. HOOPES, on the stand.

Cross-examination.

(By Mr. VANDERVEER.)

Q. Mr. Hoopes, you were bookkeeper for the Great Western Smelting & Refining Company up to the 8th of May, 1908, I think you testified?

A. About that time; yes.

Q. And as such you were acquainted with the accounts prior to that time between that company and W. A. Corder Company?

A. Yes, sir.

(Testimony of I. B. Hoopes.)

Q. You made out the bills? A. Yes, sir.

Q. For the Great *Eastern* Smelting & Refining Company? A. Yes, sir.

Q. And the remittance from Mr. Corder came through your hands and were entered by you on the books, I presume?

A. I think they were; I presume they were, unless Mr. Goldberg got them personally.

Q. And then, in some instances, would he enter them on the books?

A. Yes, occasionally, but not frequently; usually called me to do it.

Q. It was your custom ordinarily to make those entries? A. Yes, sir.

Q. And for that perhaps you would usually see the bill or the check, or whatever papers pertained to the transaction? A. Yes, sir. [338½—288]

(Mr. Vanderveer looking for papers.)

Mr. RIDDELL.—While they are busy, Mr. Hoopes, I show you check-book, which has been marked for identification Plaintiff's Exhibit "29." Plaintiff's Exhibit "29," your Honor, is the check-book of the Great Western Smelting & Refining Company. Do you know what that is?

A. That is the Great Western's check-book, yes, sir.

Mr. RIDDELL.—With the canceled checks attached to the stub? A. Yes, sir.

Mr. RIDDELL.—Of the Great Western Smelting & Refining Company?

(Testimony of I. B. Hoopes.)

A. Yes, sir, Great Western Smelting & Refining Company.

Mr. RIDDELL.—During the time that you were employed for them?

A. I didn't notice the date, but—

Mr. RIDDELL.—It starts out— A. Yes.

Mr. RIDDELL.—It starts December 9th, 1907, check number 4375. A. Yes, sir.

Mr. SCHLESINGER.—Is that one of the check-books turned over to you by Mr. Goldberg about two years ago, Mr. Riddell?

Mr. RIDDELL.—I presume it is, Mr. Schlesinger. It runs to April 29th, 1908, check number 4869.

A. Yes, sir.

Mr. VANDERVEER.—I want to show you a package containing ten statements with canceled checks attached, and ask you to examine the statement particularly and tell whether they are typical of the statement that you rendered W. A. Corder on behalf of the Great Western Smelting & Refining Company.

The COURT.—Did you mark those?

Mr. VANDERVEER.—They were marked "F" for identification.

A. Yes, sir, these are typical statements. [339—289]

Q. Those appear to be original statements, receipted vouchers now, with checks attached.

A. One from Matheson & Heggler, I don't know anything about that.

Q. Well, I will withdraw that. I will ask you to withdraw one of these, and that will be nine left in

(Testimony of I. B. Hoopes.)

that exhibit. A. Otherwise they are.

Q. Those appear to be the original instruments?

A. Yes, sir.

Q. Originating in the office of the Great Western Smelting & Refining Company? A. Yes, sir.

Q. Now, was it your custom, Mr. Hoopes, in billing Mr. Corder for the cost of material, or for freight, or other expenses incurred in handling material, to send him vouchers of the expenditures which the Great Western Smelting & Refining Company had made, or merely blank bills stating the amount?

A. Blank bills, as I recall it.

Q. And not vouchers? A. No, sir, I think not.

Q. For instance, if the Great Western Smelting & Refining Company had paid a certain amount of money for freight, it was not customary to send W. A. Corder & Company a copy of the company expense bill? A. I don't remember that we did.

Q. Do you know of any instances in which Mr. Corder came over and investigated these payments, or complained or objected to the bills you had sent him? A. No particular instance, no, sir.

Mr. SCHLESINGER.—What was the answer?
[340—290]

A. He and Mr. Goldberg sometimes got together and adjusted the accounts.

Mr. VANDERVEER.—Went over their accounts and balanced them up from time to time?

A. Yes, sir. I didn't get in on that.

Q. But it wasn't necessary to voucher them, neither was it necessary for Mr. Corder to require it?

(Testimony of I. B. Hoopes.)

A. No, sir.

Q. Nor to require for a bill? A. No, sir.

Q. And you sent the bill out, and in due course you received a check in return and receipted it and sent it to Mr. Corder? A. Yes, sir.

Q. And these accountings for those transactions was generally handled through the mail?

A. I think so.

Q. And by you in person?

A. Well, Mr Goldberg opened all the mail, always opened the mail, and turned anything over to be entered in the book.

Q. You sent out the statement? A. Yes, sir.

Q. And you usually receipted the bills?

A. Yes, sir.

Q. And you usually made the entries on the books?

A. Yes, sir.

Mr. VANDERVEER.—That is all. Now, we will offer these nine checks and receipts, which have been marked for identification Defendants' Exhibit "F."

Mr. SCHLESINGER.—No objection on the part of the Great Western.

The COURT.—Any objection on the part of the United States? [341—291]

Mr. ALLEN.—We haven't even had a chance to examine them.

On cross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. I want to ask you a question, Mr. Hoopes. How long were you in the employ of the Great West-

(Testimony of I. B. Hoopes.)

ern Smelting Company?

A. About a year; I don't remember the date exactly.

Q. As a bookkeeper?

A. As general clerk, stenographer and bookkeeper.

Q. I am going to make an appeal on behalf of the reporters here. They are trying to get these questions and answers. You had access to all of the books of the concern, Mr. Hoopes?

A. Yes, sir, I believe so.

Q. And of all of the papers and vouchers and checks? A. Yes, sir.

Q. You conferred with Mr. Goldberg from time to time concerning the usual business of the concern? A. Yes.

Q. And you are now in the employ of the navy yard, are you not? A. Yes, sir.

Q. You have been there how long?

A. Two years and ten months.

Q. The Government knew that you had been in the employ of the Great Western Smelting Company? A. Yes, sir.

Mr. SCHLESINGER.—That is all.

On redirect examination by Mr. RIDDELL the said witness testified as follows: [342—292]

Q. Mr. Hoopes, did you know whether or not the fact that you had been in the employ of the Great Western Smelting & Refining Company had anything to do with your obtaining your present position? A. Not to my knowledge, no, sir.

(Testimony of I. B. Hoopes.)

Mr. SCHLESINGER.—Mr. House, do you recall the date when you received this at the hands of either Mr. Kerr or Mr. Goldberg? (Exhibiting papers to Mr. House.)

Mr. HOUSE.—About the latter part of May, I guess.

Mr. SCHLESINGER.—Of what year, 1911?

Mr. HOUSE.—Yes, sir.

Mr. SCHLESINGER.—Subject to the objection which may be raised to items appearing on the document, we have no objection to it being admitted in evidence.

The COURT.—That is number—

Mr. RIDDELL.—Number “22.” It has been identified, your Honor. It is now admitted in evidence.

(Instrument referred to received in evidence and marked Plaintiff’s Exhibit “22.”)

Mr. RIDDELL.—Mr. Hoopes, all these checks bear the signature of whom (handing same to witness?) A. Emar Goldberg.

Q. The defendant in this case? A. Yes, sir.

Mr. RIDDELL.—Now, we offer in evidence checks forty-eight thirty-eight, dated April 21st, 1908, to the Dexter-Horton Bank, Matheson & Heggler, zinc car, in the amount of \$668.75.

The COURT.—Had that been marked?

Mr. RIDDELL.—It is a check, being one of the checks in plaintiff’s exhibit marked for identification “29.”

The COURT.—That hasn’t been marked, has it?

(Testimony of I. B. Hoopes.)

Has that book been [343—293] marked “29”?

Mr. ALLEN.—Yes, sir. It includes a thousand checks. We want this specially marked. Mark the check and stub “29-A,” then.

Mr. SCHLESINGER.—Mr. Riddell, you are familiar with both sides of this controversy, so won’t you please, before putting in a check, let us look over these before you introduce them?

Mr. ALLEN.—We offer check 4869, dated April 29th, 1908, to J. W. Allen, agent, car of zinc, I. C. 39,890, \$655.66, check and stub as Plaintiff’s Exhibit “29-B.”

(Papers referred to received in evidence and marked Plaintiff’s Exhibit “29-A” and “29-B,” respectively.)

Mr. RIDDELL.—Mr. Hoopes, do you recall any conversations that ever occurred between Mr. Goldberg and Mr. Corder relative to the supply of zinc in town?

Mr. SCHLESINGER.—Will you mention the time, please?

Mr. RIDDELL.—About this time?

A. I don’t remember any dates, but I have heard them speak of other firms being out of zinc; I don’t remember in what connection.

Q. Did they say who it was that had the only zinc in town?

A. Said that they had practically all there was.

Mr. RIDDELL.—Take the witness.

Mr. SCHLESINGER.—No further questions.

[344—294]

[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants, Edwin F. Meyer and Emar Goldberg. Vol. 2, pages 148 to 294. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 14, 1914. Frank L. Crosby, Clerk. By Ed M. Larkin, Deputy. [345]

[Testimony of Miss Agnes Hanschild, for Plaintiff.]

Miss AGNES HANSCHILD, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ALLEN.)

My name is Agnes Hanschild. I live at No. 7019 Third Avenue Northwest; between Ballard and Green Lake District. I have lived in the city about seven and a half years. My employment with the W. A. Corder Company in this city covered a period of two years in all. I was there at different times. I was there in the early part of April, 1908; left there the early part of April, 1909. I am not certain about the date when I came there; it was the early part of April. My particular duties were general office work; that included the duty of keeping the books of account of W. A. Corder & Company.

Q. I will ask you if you can identify any of these instruments which I hold in my hand. Look at them, Miss Hanschild; pull them out separately, if you will (handing papers to witness). Is that the signature of Mr. Corder (showing)? A. Yes, sir.

Q. Is that the form of check, the kind of check

(Testimony of Miss Agnes Hanschild.)

you used in your office at that time? A. Yes, sir.

Q. Whose handwriting is this in the body of the check? A. Mr. Corder's.

Q. All his handwriting? A. Yes, sir.

Mr. ALLEN.—We ask this check number 1909, dated April 20th, 1908, drawn by W. A. Corder as manager of the W. A. Corder Company, and paid to the Great Western Refining Company, a check in the [346—295] sum of \$1334.37, marked Plaintiff's Exhibit "30," and now offered in evidence.

Mr. SCHLESINGER.—Does that bear the endorsement of Mr. Alper, the president of the concern?

Mr. ALLEN.—I will read the endorsements in a moment and let you see them.

Mr. SCHLESINGER.—Yes.

Mr. ALLEN.—We offer this, your Honor, having now been stamped as Plaintiff's Exhibit "30," we offer that in evidence, coupled with the explanation of Mr. House that it was taken from the files and records of the W. A. Corder Company, hereafter to be made.

Mr. VANDERVEER.—No objection as far as Mr. Corder is concerned.

Mr. SCHLESINGER.—We certainly haven't any.

The COURT.—Admitted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "30.")

Mr. ALLEN.—Calling your attention, Miss Hanschild, to that check of date December—what is that? A. April 20th.

(Testimony of Miss Agnes Hanschild.)

Q. April 20th, 1908. You identify that signature at the bottom? A. Yes, sir.

Q. Whose signature is that? A. Mr. Corder's.

Q. Mr. Corder's signature. Whose writing is that in the body of the check? A. His also.

Q. That was the form of check in use at that time in his office? A. Yes, sir.

Mr. ALLEN.—Can you identify that sheet, Miss Hanschild? A. Yes, sir. [347—296]

Q. What is that? State to the jury.

A. Page taken from the ledger of W. A. Corder & Company.

Q. Whose account does it show?

Mr. ALLEN.—They can't hear, Miss Hanschild. She said it was a page taken from the account of W. A. Corder & Company.

A. The ledger of W. A. Corder & Company.

Q. Whose account is shown on that page?

A. Great Western Smelting & Refining Company.

Q. Who kept those figures and made the notations in there? Can you tell the jury where you begun, if at all? A. March 26th, 1908.

Q. Is it in your handwriting from March 26th, 1908, down.

Mr. VANDERVEER.—I admit all those things, made the admission a dozen times.

Mr. ALLEN.—You admit the items which they call for here?

Mr. VANDERVEER.—I admit the identity of the things and admit the facts they prove by them.

Mr. ALLEN.—This is your handwriting, part of

(Testimony of Miss Agnes Hanschild.)

it (showing)? A. Part of it, yes, sir.

Mr. ALLEN.—And we offer that in evidence as plaintiff's exhibit.

Mr. VANDERVEER.—Mr. Allen, there is one point on which I reserve at all times to object, that is the materiality of it. I will admit the identity of any of these instruments and will admit, on the other hand, the facts you claim they prove, as far as they are material.

Mr. ALLEN.—Mark this Plaintiff's Exhibit "31." Any objection by counsel for the other defendants?

Mr. ALLEN.—I will ask you, Miss Hanschild, to take a look at that check which I just offered. Can you identify the signature on that check, Miss Hanschild? [348—297]

A. Yes, sir, Mr. Corder's.

Q. Mr. W. A. Corder. Whose handwriting is it?

A. The body of the check was made out by myself.

Q. Beg pardon?

A. The body of the check was made out by myself.

Q. By yourself.

Mr. ALLEN.—We offer for identification merely at this time this check, your Honor, the same being a check of June 1st, number 1978.

(Paper referred to marked Plaintiff's Exhibit "32" for identification.)

Mr. ALLEN.—Calling your attention to an item—

Mr. VANDERVEER.—As far as those items are concerned, I will admit the fact.

Mr. ALLEN.—Calling your attention to an item

(Testimony of Miss Agnes Hanschild.)

which is about midway down the page, in fact, in the—

Mr. KERR.—Mr. Allen, supposing you check those items, so when you put one in evidence we won't have to thresh over the entire amount of that account.

Mr. ALLEN.—Yes, it has been done. The fifteenth line, where the check mark is, being an item reading “April 30th, zinc, ditto, zinc,” referring to folio 828, the sum of \$3,708.55. What does that mean as found in this place upon your ledger upon the account of the Great Western Smelting & Refining Company, taken from the books of W. A. Corder & Company? Tell the jury, you are a bookkeeper and they are not bookkeepers, tell them just what that means on there.

A. That was, according to this ledger sheet, there was a charge of zinc plate sold to Great Western Smelting & Refining Company.

Mr. SCHLESINGER.—That is, sold by Corder & Company?

A. Sold by Corder & Company to the Great Western Smelting & [349—298] Refining Company.

Mr. ALLEN.—That bears date of April 30th, as it appears on the ledger. Now, calling your attention to the other items on the other side of the ledger. What is the amount of that where it is marked with an “X”? A. \$4,974.31.

Q. \$4,974.31. What do those figures mean there (showing), “C-24”?

A. Posted from cash-book.

(Testimony of Miss Agnes Hanschild.)

Q. What do the figures, the letters, out to the right indicate, what is that? A. On June 2d.

Q. That is the date? A. Yes, sir.

Q. That is the date, then, that you passed to the credit of the Great Western a remittance from the Great Western to the Corder Company, is that right of the sum of four thousand and some odd dollars?

A. Yes, sir.

Q. I see. You personally don't know whether you handled these checks or not? Do you remember, do you have any recollection in the matter; do you have a recollection of handling these particular checks as they came through your hands?

A. I must have handled them in order to get a balance.

Mr. SCHLESINGER.—I didn't get your answer, Miss Hanschild.

A. I must have handled them in order to get a balance of the books.

Mr. SCHLESINGER.—In order to get a balance?

A. Yes, sir.

Mr. ALLEN.—Any objection?

Mr. SCHLESINGER.—If I understand you rightly, Mr. Allen, this comes from Mr. Corder's book?

Mr. ALLEN.—That is exactly right.

Mr. SCHLESINGER.—Has been in the custody of Mr. House for [350—299] about two years?

Mr. ALLEN.—That is right.

Mr. SCHLESINGER.—And is unchanged?

Mr. ALLEN.—Mr. House—I will ask him now.

(Testimony of Miss Agnes Hanschild.)

Mr. House, these records have not been changed, and they have been in your custody?

Mr. HOUSE.—Yes, sir.

Mr. ALLEN.—You will testify to that later?

Mr. HOUSE.—Yes, sir.

Mr. ALLEN.—There is no objection, then, to this Plaintiff's Exhibit "31" being admitted, sheet from the books of W. A. Corder, their ledger sheets. The items referred to are the debit on this side and this here (showing).

(Papers referred to received in evidence and marked Plaintiff's Exhibit "31.")

Mr. ALLEN.—I will call your attention to this rather cumbersome, heavy book I am carrying around here. Do you recognize that, Miss Hanschild? A. Yes, sir.

Q. Has that page been identified (showing)?

Mr. RIDDELL.—No, but the book has. You can identify it exhibit so and so in plaintiff's identification.

Mr. ALLEN.—We will offer this particular page. Will you mark that page?

(Page referred to marked Plaintiff's Exhibit "33" for identification.)

Q. Again calling your attention to this page from the ledger, Miss Hanschild, this is the ledger of the W. A. Corder & Company and shows what account in that ledger, Miss Hanschild?

A. This is the order file.

Q. In the order file of the company. This account,

(Testimony of Miss Agnes Hanschild.)

does that show—or to whose account does that refer? [351—300]

A. Great Western Smelting & Refining Company.

Mr. ALLEN.—Explain to the jury exactly any notations that may be on there, and just exactly what they mean. Read that written—any of these figures (showing). What do these letters mean (showing)?

Mr. VANDERVEER.—Any letters we wouldn't understand.

A. Order number T. E. G., which I presume means Mr. Goldberg, for one-half your fees—

A. Order number T. E. G., which I think would mean Mr. Goldberg's name, one-half new invoice to navy, 1½ by 6 by 12 zinc, \$3,708.55.

Q. Does that now refer to that same ledger charge that we were just referring to?

A. Yes, sir; this was posted into the ledger on April 30th.

Q. So that charge against the Great Western would appear on that ledger sheet. We offer that in evidence, your Honor.

Mr. VANDERVEER.—No objection.

Mr. SCHLESINGER.—There is no objection, Mr. Allen, to that.

The COURT.—Admitted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "33.")

Mr. ALLEN.—Miss Hanschild, I call your attention to what purports to be a cash-book. Kindly identify that for the Court and jury, if you can do so.

(Testimony of Miss Agnes Hanschild.)

What book is that; where does it come from—what book is that?

A. Cash-book of W. A. Corder & Company.

Mr. VANDERVEER.—Nothing else in this order-book you want?

Mr. ALLEN.—Not that I know of at this time.

Q. This was his book in use down there at the time you were employed by the company, was it?

A. It was; yes, sir.

Q. I call your attention to certain specific—I want this book [352—301] marked for identification as Plaintiff's Exhibit "34."

(Book referred to marked Plaintiff's Exhibit "34" for identification.)

Q. Calling your attention to the third item from the bottom, I will ask you to tell me about that entry there. Is that in your handwriting? A. It is.

Q. Read it to the jury.

A. On April 20th, Great Western Smelting & Refining Company—

Q. Under what head do you find it?

A. Under merchandise.

Q. You identify the other above as also your handwriting? A. Yes, sir.

Q. But the sum \$1,334.37 is under the head of merchandise. Now, take a look at page 35. The other was on page 27. Take a look at page 35. Calling your attention to the second—well, on page 35 to the second item on that page, both on page 34 and page 35, the second item. Do you recall, is that your handwriting? A. It is.

(Testimony of Miss Agnes Hanschild.)

Q. Well, read each of those items, one on page 34—

A. That is the credit entry on the ledger.

Mr. ALLEN.—All those entries were in your own handwriting? A. Yes, sir.

Q. That is the cash-book of W. A. Corder Company, no number given, but shows entries for the year 1908. This is plaintiff's exhibit for identification number "34." Miss Hanschild, while you were in the employ of this company during this time you had an opportunity to observe the relations between Mr. Corder and Mr. Goldberg, did you not?

A. I saw Mr. Goldberg in the office occasionally.
[353—302]

Q. What were their relations, friendly or otherwise?

Mr. SCHLESINGER.—We admit they were friendly at times.

Mr. ALLEN.—Close business relations, were they not, Miss Hanschild? A. Apparently, yes, sir.

Q. I will ask you whether or not you recall a singular circumstance of the employer by whom you were employed making any social excursions with the negro, Mr. Meyer, the defendant?

Mr. VANDERVEER.—I object to the question, if the Court please, as leading, and making an unnecessary comment on the circumstance referred to.

Mr. SCHLESINGER.—My objection goes, your Honor please, to the reference to the man's color.

The COURT.—I think that might be eliminated and stricken from the question.

Mr. ALLEN.—Well, I withdraw it, except for the

(Testimony of Miss Agnes Hanschild.)

purpose of identification.

Mr. SHIPLEY.—Identify him without that in the presence of the jury.

Mr. ALLEN.—I don't know whether you know Meyer, the defendant, or not. Do you, as a matter of fact, do you know this man sitting over here by the water cooler; can you identify that man?

A. I have seen him in the office once or twice.

Q. You have seen him in the office once or twice. Do you recall any circumstance in connection with that man and Mr. Corder with reference to their being in contact on any occasion, or going anywhere on any occasion in a social way, and what was the circumstance of that fact?

Mr. VANDERVEER.—It is immaterial and irrelevant for any purpose.

The COURT.—Let her answer.

Mr. VANDERVEER.—Note an exception. [354—303]

The COURT.—Exception noted.

A. I do recall them going out together once.

Mr. ALLEN.—Take the witness.

On cross-examination the witness testified as follows:

(By Mr. SCHLESINGER.)

Q. Miss Hanschild, as I understand you, you were in the employ of the Corder Company as a bookkeeper? A. Bookkeeper and general office work.

Q. You are not now in the employ of the Government, are you, Miss Hanschild? A. I am not.

(Testimony of J. A. Kettlewell.)

Q. I am glad to know that. That is all. [355—304]

[Testimony of J. A. Kettlewell, for Plaintiff
(Recalled—Cross-examination).]

J. A. KETTLEWELL, a witness on behalf of the plaintiff, recalled for continued cross-examination, testified as follows:

(By Mr. MORRIS.)

I was arrested on the 28th day of March, 1911.

Q. And between the time of your arrest and the time you entered your plea of guilty in this court, the charge that was laid against you by the Government in a transaction that pertained to the navy yard frauds, you disclosed to Mr. Hutson, the Deputy District Attorney, all of your connections and relations in a fraudulent matter with the United States Government through the Pay Office?

A. I could answer that yes, but I want to qualify it by saying that I answered the questions propounded by Mr. Hutson, but I didn't—there may be things that he didn't ask me about. I didn't volunteer any information at that time.

Q. You were asked, in substance, the same question on the former trial of this defendant Meyer in cause 2042; this cause is now being tried is 2039, and you may answer to that, "I furnished the Government all information concerning my own transactions," did you not?

A. Yes, I think that is the substance of what I said.

(Testimony of J. A. Kettlewell.)

Q. This conversation that you had with Mr. Hutson covered a period from the 28th day of March up until the Government succeeded in getting from you all the information you had to tell to them?

A. Why, I had frequent conversations with Mr. Hutson.

Q. I didn't ask you that question. Answer my question.

A. I wouldn't say that. As I said before, I answered all the questions that Mr. Hutson asked me. Whether that covered all the information that I had or not, I couldn't say that.

(Witness continuing.) The subject matter that was under discussion for the first ten [356—305] days after my arrest, or from the 28th of March, 1911, up until the middle of April, 1911, pertained to my crooked transactions in connection with the Pay Office. I gave a great deal of information to Mr. Hutson and other representatives of the Government pertaining to my transaction with the Pay Office—crooked transactions. I cannot say that I told them all. I gave Mr. Hutson all information concerning my own transactions with which I have been connected in connection with the Pay Office of an unlawful nature. There is no such firm, as far as I know, by the name of Lyman-Evans & Co.

Mr. ALLEN.—Your Honor, this is the first one of these same problems. The witness has already testified that there were a number of offenses. He has bared his soul here in that direction. Now, he is asking him as to a particular offense that comes

(Testimony of J. A. Kettlewell.)

within this definition of your Honor. I submit he could not be permitted to answer the question.

Mr. SCHLESINGER.—Under our theory we claim to be entitled to go into everything.

The COURT.—Mr. Kettlewell, is this one of the—
A. I don't know as to the time—

The COURT.—Is this one of the matters to which you referred? Will the answer to this tend to incriminate you?

A. I don't know—I would have to know the time in which this thing occurred.

Mr. SCHLESINGER.—It is barred, if your Honor please, as I understand it.

The COURT.—Objection sustained. I understand this is not a matter with which any of the defendants were connected or associated at all in any way.

Mr. MORRIS.—Why, it is a matter, may it please your Honor, that [357—306] was submitted—

The COURT.—No, you can answer my question. I asked you whether it is contended this is a matter in which some of the defendants in this case were associated or connected with the witness?

Mr. SCHLESINGER.—Your Honor, I want to simply state this: We shall be entitled to go into all of these transactions, because we shall show certain threats coming within certain conversations between this man upon the stand and Mr. Goldberg. So it is bound to appear in this courtroom before these twelve men, and they can't keep it out. It may as well come out now.

(Testimony of J. A. Kettlewell.)

The COURT.—Well, we will cross the bridges when we get to them. Proceed.

Mr. SCHLESINGER.—Note an exception to that.

The COURT.—Exception allowed.

Mr. MORRIS.—Your Honor will allow the defendants an exception?

The COURT.—Yes.

Mr. MORRIS.—Is it not a fact, Mr. Kettlewell—this is for the purpose of making the record, your Honor—that this Lyman-Evans transaction to which I just referred in my question occurred in the year 1908, latter part thereof?

A. I could not give any definite date unless I saw the folder. I could tell from that, is the only information that I have that I recollect now.

Mr. MORRIS.—Mr. House, will you kindly let me have the folder, the Lyman-Evans transaction?

The COURT.—Isn't there something else you can take up at this time?

Mr. MORRIS.—Your Honor's ruling has made it necessary for defendants at this time to make the record.

Mr. MORRIS.—Mr. Kettlewell, I now direct your attention to open purchase requisition No. 147, of series 1910, Naval [358—307] Supply Fund.

Mr. ALLEN.—That is the year, Mr. Morris?

Mr. MORRIS.—Yes, sir, series 1910, Naval Supply Fund. If there is any doubt—(exhibiting same to Mr. Allen).

Q. (Continuing.) Said requisition being the Gov-

(Testimony of J. A. Kettlewell.)

ernment's exhibits, being Plaintiff's Exhibit Number "102" in cause No. 2042.

Mr. ALLEN.—That the former trial of Meyer?

Mr. MORRIS.—The former trial of Meyer on that indictment 2042.

Q. I now hand you said exhibit and ask you to examine the date on the requisition contained therein and see if you can answer my question, that is, state to the jury the date of the requisition for the ferromanganese which you purchased from Lyman-Evans, a fictitious corporation?

A. The date of the requisition is January 20, 1910.

Mr. ALLEN.—Now, your Honor, the objection is made—

Mr. MORRIS.—Wait a moment, I have another question.

Mr. ALLEN.—It is already shown here more than three years have elapsed and it is within his Honor's ruling, and why should you go any further?

Mr. MORRIS.—Now, Mr. Kettlewell, is it not a fact that you, in the fall of 1912, the month of October or November, or sometime previous to January of 1913, testified in this court freely and voluntarily on behalf of the Government, on direct examination, and also on cross-examination by the defendant Meyer's counsel, relative to each and every transaction that took place between yourself and Lyman-Evans, who was a fictitious person?

A. Yes, I am perfectly willing to tell about that.

Mr. MORRIS.—I am not asking you whether you are perfectly willing to tell about it, I am asking you

(Testimony of J. A. Kettlewell.)

if you did not so testify. Say "Yes" or "No."

A. Yes, I answered the question. [359—308]

Mr. ALLEN.—Your Honor, I object to the question and move to strike out the witness' answer. He goes back, now, to another record—

Mr. MORRIS.—Mr. Coiner was the then District Attorney? A. Yes, sir.

Q. And the gentleman who examined you?

A. Yes.

Q. In said proceeding, and since that time, and down to the present, no criminal proceeding of any kind has been instituted against you by the Government of the United States, or by any other legally constituted authority? A. No.

The COURT.—Is that all with this document you further identified?

Mr. MORRIS.—Yes, sir, that is all on that subject, your Honor.

Q. Mr. Kettlewell, in the course of my cross-examination on yesterday I asked you if you had ever opened any bids—

Mr. MORRIS.—Do I understand this Court to hold now that I can go into this Lyman-Evans transaction, that I can cross-examine the witness now on the Lyman-Evans transaction?

The COURT.—Well, you haven't asked permission to.

Mr. MORRIS.—Well, I now most respectfully ask permission to grant me permission to cross-examine Mr. Kettlewell relative to the Lyman-Evans transaction.

(Testimony of J. A. Kettlewell.)

The COURT.—Proceed and propound your question and see what the court will do with it.

Mr. MORRIS.—Yes, sir.

Q. Mr. Kettlewell, state to the jury, if you can, who constituted the firm of Lyman-Evans & Co.

A. That was a fictitious firm.

Q. Who conceived the idea of using the name of Lyman-Evans & Co. in dealing with the United States Government for the supply of [360—309] ferromanganese?

Mr. MORRIS.—Answer the question, will you please, Mr. Kettlewell?

(Question repeated.)

Mr. ALLEN.—Getting right into this—

The COURT.—And the objection will be sustained, because I don't want to go into the detail of the matter. You can be more direct and leading in the matter in which you interrogate the witness.

Mr. MORRIS.—You testified that Lyman-Evans & Co. was a fictitious name?

A. Yes.

Mr. ALLEN.—Now, your Honor, I object to that.

The COURT.—Just let him answer.

Mr. MORRIS.—I am going to try to follow the Court's ruling. Is that right?

A. Yes.

Mr. MORRIS.—After this requisition, to which I have just directed your attention, of January 20th, 1910, was issued, you, in your official capacity as the Paymaster's clerk in the Pay Office at Seattle, issued proposals to numerous persons, did you not, for the

(Testimony of J. A. Kettlewell.)

supply for the manganese mentioned in that requisition?

A. Yes.

Q. And after issuing those proposals you, over your own signature, put in a proposal as a representative of Lyman-Evans & Co., did you not?

A. No, not over my own signature, no, sir.

Q. Did you not write the name of Lyman-Evans & Co. to that proposal?

A. Yes, in typewriter, I think.

Q. Sir?

A: Yes, it was put in typewriter, I think.

Q. You put it in in what?

A. It was typewritten in. I did that, yes. [361—310]

Q. Part of it was typewritten by “Lyman-Evans & Co.” in type by whom as secretary?

A. I could tell by looking at the folder. I did that, but I can’t tell you the details until I see the folder.

Q. Let me have the Paymaster’s folder, will you, Mr. House, the ferro-manganese transaction. I understand that you prepared the proposal in typewriting?

A. I prepared the proposal in the manner that it is shown there. However it may be, I couldn’t tell until I have seen it.

Q. I now direct your attention to proposal for supplies or services—

Mr. ALLEN.—Your Honor will understand my objection goes to all these questions pertaining to this particular transaction.

(Testimony of J. A. Kettlewell.)

Mr. MORRIS.—(Continuing.) —in cause No. 2042, and ask you if that is a copy of the proposal, or the original proposal, which you made out in typewriting? A. This is the original proposal.

Q. Yes, sir. Now, that was a proposal submitted by you as a representative of this fictitious firm and delivered to the Government, a certain amount of ferromanganese at a certain price? A. Yes.

Q. Now, in the course of the procedure, as we have explained to this jury heretofore, it was necessary for the Paymaster, after receiving this proposal, to issue an award, was it not? A. Yes.

Q. And you did issue in this particular transaction an award, did you? A. Yes, sir.

Q. Now, will you kindly look on the proposal again and see if you find there that the award was issued, and if so, in whose [362—311] handwriting?

A. It is stamped, "Awarded to Lyman-Evans & Co.," and the date in my handwriting.

Q. In your handwriting?

A. Initiated by the Paymaster.

Q. Initiated by the Paymaster? A. Yes, sir.

Q. Who was the Paymaster at that time?

A. Eugene D. Ryan.

Q. Eugene D. Ryan. And Eugene D. Ryan is one of the same men that the Government officials tried to get you to connect with this transaction for *tens* after your arrest, is he not?

A. They asked me if he was connected with it and I told them no, which is true.

Q. I would like to have the privilege of letting the

(Testimony of J. A. Kettlewell.)

jury look at this for a second, if your Honor please.

Mr. ALLEN.—Already admitted in evidence?

Mr. SHIPLEY.—I think it is just identified.

Mr. ALLEN.—Well, with this understanding of the Court,—

The COURT.—If you have any objection to make, make it and I will rule upon it.

Mr. ALLEN.—I do object unless I have a right to cross-examine the witness about this.

The COURT.—The objection is sustained to that going to the jury or going in evidence. He has testified to the fact and that is all that you are entitled to. Proceed.

Mr. MORRIS.—It is a fact, is it not, Mr. Kettlewell, that after this award was made—or going back. Previous to making the award in this particular case, is it not a fact that one Jamison, a legitimate firm, had submitted a bid to the Government for the furnishing of this identical ferro-manganese for 12 cents per [363—312] pound? A. Yes.

Q. Did I not ask you yesterday, in the presence of this jury, if it was not a fact that you opened bids, found out what they were and enclosed them in the envelopes, and thereafter proceeded, after securing information in that way you answered no?

A. No, I don't think—it wasn't—

Q. You did not so answer—

A. It wasn't done in that way. I am not trying to hide—

Mr. MORRIS.—I am not asking you if it was done in that way, I asked you if you did not so answer

(Testimony of J. A. Kettlewell.)

yesterday in the presence of this jury.

A. That I did not open these bids?

Q. Yes, sir.

A. I think that is correct, yes.

Q. I want to direct your attention to the examination on the former trial of this defendant in cause 2042, calling your attention to this Jamison transaction. "How did you know that the Jamison bid was," question asked by me. Your answer, "Well, I must have opened that before the regular opening to have had sufficient time to have prepared the other bid." Did you so answer? A. I may have.

Q. Is it not a fact that you did?

A. Why, I say that I may have. These matters of detail I can't all recall. I can tell you the important facts very clearly.

Q. Maybe I can refresh your memory by reading a little further. Question, "Must have done it?" Answer, "Yes, I must have done it." Question, "Well, did you do it?" "Yes, I probably did." Is that correct?

A. Yes, that is right, the way I remember it now.
[364—313]

Q. Then, after opening the Jamison bid, you enclosed that in another envelope and left it there to be opened when the time came to open all the bids?

A. No, I wouldn't say that. The information may have been received after they were regularly opened and this filled in later.

Q. Now, after the award had been made to Lyman-Evans & Co., Lyman-Evans & Co. opened up a com-

(Testimony of J. A. Kettlewell.)

munication with some person in this city, the telegraph office, I believe, asking for reference as to who Lyman-Evans & Co. were, did they not?

A. I don't just understand your question.

Q. I withdraw that question. Did you receive any communication from any persons in Colorado relative to this particular transaction? A. Yes.

Q. You wrote to some firm in Colorado whom you knew could supply ferromanganese, did you not?

A. I telegraphed them, I think.

Q. Yes, you telegraphed them. And you received a reply from that firm in Colorado asking for reference as to Lyman-Evans & Co., did you not?

A. I don't remember that part of it. I know we was in correspondence with them.

Q. Is it not a fact that you did receive telegraphic communication from a firm in Colorado relative to this particular transaction, and, in order to furnish reference, you went to the *Sshuey* Bank on Second Avenue in order to have them represent you or give reference? A. Yes, a deposit.

Q. Then you did receive information or inquiry as to who Lyman-Evans [365—314] & Co. were?

A. I would like to explain what I did.

Q. Answer my question and explain.

A. Yes, we had communication with that firm. Telegraphed them for prices and received their quotation, and in this connection I will say that the defendant Meyer was equally implicated with myself. He went to the telegraph office with me and we telegraphed to this firm, and the matter was fixed up be-

(Testimony of J. A. Kettlewell.)

tween us. He knew all about it, and I had nothing to hide in this matter at all.

Q. Will you kindly tell this jury who told you to make that statement here against the defendant Meyer?

A. Nobody told me. It is the truth, and I can't evade the truth, and I don't want to evade it.

Q. You don't want to evade it?

A. I don't want to evade the truth in any particular in this matter.

Q. And in none of your proceedings through this other trial have you tried to evade the truth?

A. Not in any respect, no, sir.

Q. Let me ask you a question right here. Is it not a fact that you entered the employ of the Navy Department, the Storekeeper's Department of the Navy, in January, 1903?

A. Entered the Storekeeper's service at that time?

Q. Yes, sir. A. In 1903?

Q. Was it 1903 or 1902?

A. It was in January, 1902, as I remember it.

Q. January, 1902, all right. And shortly thereafter, within two months or such a matter, did you not borrow from the defendant [366—315] Meyer a hundred and fifty-five dollars and give him your note? A. Yes, sir.

Q. For that amount? A. Yes.

Q. And did you not, on the other trial of this case, swear that you had paid Meyer that note and had taken it up, and immediately after you so testified I

(Testimony of J. A. Kettlewell.)

pulled the note and presented it, shoved it under your nose?

A. No, sir, I didn't testify to that. I would like to say what I did testify to.

A. (Continuing.) I admitted I borrowed this money from Meyer and that I had given him a note for it, and I testified that I had paid the money, and Mr. Morris, I think, asked me what become of the note and I said I presumed it had been destroyed, that I hadn't seen it, had no recollection of it. Then he produced the note, and I did say the bill had been paid and Meyer kept the note.

Mr. MORRIS.—Directing your attention to your evidence on the former trial:

Q. (Mr. MORRIS.) “Mr. Kettlewell, you borrowed from the defendant at different times, ten, twenty, twenty-five dollars, during his employment at the Puget Sound Navy Yard, did you not?” You answered, “No, sir, I borrowed a hundred and fifty dollars from Mr. Meyer. It was either in 1902 or early in 1903. I think it was in 1902, and I paid him that within a year. That is the only money I ever borrowed from Meyer in my life.” Did you so testify? A. I think that is correct, yes, sir.

Q. Yes, sir. “You paid him that, did you?” To which you answered, “I paid him that.” “When did you pay him?” Answer, “I paid him at different times. I didn't pay all at once, I paid him in [367—316] various amounts extending into the year 1903. The close of the year 1903 it had all been paid.” Did you so answer?

(Testimony of J. A. Kettlewell.)

A. Whether I did or not, that is the fact as I remember it.

Q. Well, your memory is good?

A. Well, I don't know.

Mr. MORRIS.—Question, “Did you give Mr. Meyer any evidence of indebtedness at the time you borrowed this money from him?” You remember me asking you that question, do you not?

A. I remember the general trend of the question.

Q. Answer, “I don't know as I did. I don't think I did.” Do you remember so answering?

A. Yes, that is my recollection of it.

Q. Question, “If you did I suppose after you repaid it to Mr. Meyer you destroyed that evidence of indebtedness?” You answered, “Yes, if there ever was anything it has been destroyed, as near as I can remember.” A. Yes, that is right.

Q. Now, after you so testified—what is that exhibit, “61”? Mr. House, get me that note, will you, please? Is it not a fact I immediately turned to Mr. Meyer here and produced that note and handed it to you, and that you admitted that as the note you gave him at that time and that you hadn't paid it?

A. No, sir, I did not say that. I admitted that was the note, but I didn't say that it hadn't been paid. I said it had been paid and Meyer had retained the note and I had forgotten all about the note. The money had been borrowed and was repaid.

Q. And still if we hadn't been able to have sprung that note on you—

(Testimony of J. A. Kettlewell.)

(By Mr. MORRIS.)

Q. Mr. Kettlewell, again calling your attention to the ferromanganese transaction, is it not a fact that you received the Government's [368—317] check in the sum of \$1,012.77 in full payment for the manganese? A. Yes, I received the check.

Q. And thereafter you endorsed upon the back of that check in type "Lyman-Evans" by, in your own handwriting, a name as secretary? A. Yes.

Q. And is it not further a fact that you took said check and delivered it to a gentleman who resided in Seattle by the name of Dam, who is now deceased, without placing thereon your proper endorsement?

A. Yes.

Q. And it is further a fact, is it not, that Mr. Dam gave you credit for \$1,000 of the amount represented by said check and returned to you in cash \$12.77?

A. Yes, sir.

Q. I desire briefly to direct your attention to one other transaction. Did you ever have any dealings with the Government under the name of Smith-Hunt? A. Yes.

Q. Smith-Hunt was a fictitious firm?

A. Yes, sir.

Q. The Storekeeper's Office of the Puget Sound Navy Yard had issued a requisition for 1,000 feet of signal chain? A. Yes.

Q. That requisition was issued either by the defendant Meyer or under his direction? A. Yes.

Q. That requisition called for 1,000 feet signal chain? A. I think it was a thousand feet, yes.

(Testimony of J. A. Kettlewell.)

Q. Yes, sir. And you issued the award to Smith-Hunt? A. Yes. [369—318]

Q. You submitted the proposal to the Pay Office for Smith-Hunt? A. Yes.

Q. You ordered the signal chain for Smith-Hunt? A. Yes.

Q. And in place of ordering 1,000 feet called for by the requisition, you ordered 2,000 feet?

A. Yes.

Q. 1,000 feet of said chain was inspected and passed by the inspectors at the Puget Sound Navy Yard when you delivered same under the name of Smith-Hunt? A. Under this first requisition, yes.

Q. Yes, sir, the first requisition. The other 1,000 feet of said chain was not accepted?

A. Not at that time.

Q. Not at that time. You, as the representative of the fictitious Smith-Hunt, wrote a letter to the Puget Sound Navy Yard Storekeeper making an excuse, or asking them to accept the additional 1,000 feet and giving some reason therefor? A. Yes.

Q. You received, in the course of time, the Government check for the 1,000 feet under the first requisition? A. Yes, sir.

Q. And you had your sister cash said check for you? A. Yes, sir.

Q. Your sister was not mixed up in any fraudulent transactions? A. No, sir.

Q. She knew nothing about your fraudulent transactions with the Government, did she? A. No.

Q. Mr. Dam, to whom you passed this check for

(Testimony of J. A. Kettlewell.)

the ferromanganese, [370—319] knew nothing about your fraudulent transactions with the Government, did he? A. Nothing whatever.

Q. He was connected with you in no way?

A. I beg your pardon?

Q. He was connected with you in no way?

A. No, sir.

Q. In an unlawful way, I mean. You had your sister cash checks of like nature such as was made payable to the fictitious Smith & Hunt on a great many occasions, did you not?

A. I can't recall any others now; there may have been others.

Q. I am not asking you to recall them; I am asking you if it is not a fact, if you did not testify on the other trial, that she cashed numerous checks of that kind?

A. I say, that I can't recall any; there may have been some.

Q. You also had letters sent to your sister's address out on Aloha Street, is that the place?

A. She lived on Alder Street.

Q. Alder Street, yes, sir. You had numerous letters relating to these crooked transactions between yourself and the Government addressed to your sister's place of residence on Alder Street

A. Not in her name, you understand, but to this place.

Q. I didn't ask you if it was in her name. I asked you if you addressed them to her place of residence?

A. I think you inferred I addressed them to her.

(Testimony of J. A. Kettlewell.)

I don't want you to create that impression. They were addressed to these various firms at this street and number.

Q. It is a fact, is it not, that these letters were addressed to you in person or to you as under a fictitious name? A. Yes. [371—320]

Q. That you called and went to your sister's residence the house that was then kept by her, on that street, that is right, is it not? A. Yes.

Q. And you went to that place on numerous occasions and got those letters? A. Yes.

Q. She at that time knew nothing about your unlawful transactions with the Government?

A. I beg your pardon?

Q. She knew nothing whatever about your transactions while you were receiving those letters?

A. No, nothing whatever.

Q. You also had your sister go to one or more of the respective banks in this city and send money by draft to the east to persons from whom you had bought goods to deliver under fictitious names to the Puget Sound Navy Yard, did you not?

A. I had her go to these banks and pay the drafts that had arrived.

Q. You had your sister do it? A. Yes.

Q. You also had your brother in law, your wife's sister's brother—what is it, your sister's husband?

A. My wife's brother.

Q. Your wife's brother, that is what I thought. Mr. McManus' sister is what relation to you?

(Testimony of J. A. Kettlewell.)

A. Mr. McManus' sister—mother, stepmother, is my half sister.

Q. You had Mr. McManus, at your request—

A. I beg your pardon? When I said this was my wife's brother I thought you referred to another transaction. I didn't understand [372—321] you when I answered in that way.

Q. This sister of yours to whom I refer, what is her name? A. Mrs. McManus.

Q. Mrs. McManus. What relation is she to Pete McManus?

A. I don't know anyone by that name.

Q. Phillip McManus?

A. She is his stepmother.

Q. You also had Mr. McManus, at your request, submit a proposal to supply the Government with cement?

A. Yes. Well, I will qualify that. I gave him a proposal, gave him an opportunity to submit a bid, yes, that is what I meant to say.

Q. Mr. McManus did, at your request, furnish cement for the Government, did he not?

A. He furnished cement on his own responsibility.

Q. And when the payment for said cement, that is, the check, the Government check for the payment of said cement, had been received by you, you went to an old gentleman by the name of Winkler, did you not, and got Mr. Winkler to cash that check for you?

A. No, sir, you have got the transaction mixed.

Q. Sir? A. You have got it all mixed up.

Q. Well, say no, then.

(Testimony of J. A. Kettlewell.)

A. No, Mr. Winkler never cashed a check for Mr. McManus that I know of.

Q. Is Mr. Winkler the gentleman who submitted the bid? A. Why, he submitted—

Q. Answer that yes or no?

A. Yes, he submitted a bid. Not on this same—it may have been on this same or another cement transaction. [373—322]

Q. He submitted the bid at your request, did he?

A. Yes, sir.

Q. He received a check in the course of time in payment for the wares that were delivered to the Storekeeper? A. Yes.

Q. You had him cash that check and return the money to you, did you?

A. He cashed the check, yes.

Q. And Mr. Winkler at that time was an absolutely innocent party, as far as any criminal intent to the transaction was concerned?

A. Absolutely innocent, yes.

Q. And that Mr. Winkler is now under indictment by the Grand Jury who returned the indictment against this defendant Meyer on the evidence you furnished the Grand Jury?

A. I never appeared before the Grand Jury.

Q. You didn't appear before the Grand Jury?

A. No, sir.

Q. Mr. Kettlewell, in your direct testimony the other day I understood you to testify that during the year 1907 that the defendant Meyer came to the Purchasing Pay Office on a number of occasions and

(Testimony of J. A. Kettlewell.)

talked with you, and, among other things, spoke of a zinc transaction? A. Yes.

Q. That is right. That was during, I believe, the latter part of 1907?

A. At numerous times during 1907.

Q. I say, it was during the latter part of 1907, was it?

A. During the latter part and before the latter part of 1907.

Q. Now, during the latter part of 1907 and before the latter part [374—323] of 1907. What do you mean by before the latter part of 1907?

A. Well, I would like to know what you meant by the latter part.

Q. Well, I should consider the latter part of 1907 would be after the middle of 1907.

A. Well, I thought that possibly you meant November and December by the latter part. Mr. Meyer saw me frequently during the year of 1907 at various times during the entire year.

Q. And he saw you during November and December? A. Yes, sir.

Q. And Mr. Meyer, I suppose, I understand you to say, came to the Pay Office in the evening?

A. Usually in the evening, yes.

Q. And I understand you to say that two or three times a week?

A. Well, very frequently, yes; sometimes as often as that.

Q. You testified, using your own language, you testified two or three times a week?

(Testimony of J. A. Kettlewell.)

A. Yes, I think I saw him as often as that.

Q. And, of course, he would come in there in the evening—the boat arrived here from Bremerton about what time, six or seven o'clock?

A. About that time, I should think.

Q. Now, did he come to your office generally when he got off the boat, or did he go out to his house and get his meal first and then return?

A. Usually after dinner.

Q. Usually after dinner. That is, he would go to his home and get his meals and then come back down to the office and talk with you for an hour or two, I suppose? A. Yes.

Q. If that occurred two or three times a week, or thereabouts, [375—324] during November and December, it would have consumed probably fifteen or twenty times, a fair estimate?

A. Yes, I have seen Meyer that many times in the navy office.

Q. In the months of November and December?

A. I saw him quite frequently.

Q. Yes, sir. You don't know, as a matter of fact, that the defendant, during all that time, was living with his wife at Bremerton and was not coming to the city of Seattle on the last boat, or any other boat, do you?

A. I don't know where he was living at all. I know that I saw him in the office and talked with him there.

Q. All right. You went to work at the Puget Sound Navy Yard, the Storekeeper's Department,

(Testimony of J. A. Kettlewell.)

the first of January, 1902? A. Yes, sir.

Q. Previous to the first of January, 1902, you had worked for John Davis & Company, a large real estate firm of this city? A. Yes, sir.

Q. You worked for John Davis & Company about two months previous to January, 1902, did you not?

A. About that length of time.

Q. And during this two months you were John Davis' cashier?

A. No, I wouldn't say that. I would have to explain that, because—

Q. Answer my question. I haven't come to the place to explain yet. You will have a chance to explain. You were his cashier, were you not?

A. I couldn't answer that question yes or no.

Q. You had charge of the cash, did you not?

A. I couldn't answer that directly. I didn't have entire charge of it, no.

Q. You had access to the cash, did you not?
[376—325]

A. Oh, yes, yes, I will say that.

Q. And when you quit John Davis & Company you secured a letter from John Davis & Company of recommendation, did you not? A. Yes, sir.

Q. And after that time John Davis & Company found you were short in your accounts—

A. No, sir.

Q. Let me finish the question. Found you were short in your accounts, and when you were confronted with it you admitted you were \$42 short?

A. No, sir, that is not the fact in the matter at all.

(Testimony of J. A. Kettlewell.)

Q. All right, sir. And thereafter you paid to John Davis & Company, in settlement of the shortage which they claimed, not \$42, but a hundred and forty-two dollars, did you not?

A. In view of my answer to the previous question I couldn't answer that without an explanation.

Mr. ALLEN.—Make your explanation.

Mr. MORRIS.—I submit, if your Honor please, I am entitled to an answer if he did not pay them \$142.

The COURT.—Let him answer and then explain.

A. Yes, sir, I paid them \$142, and I will tell you why.

Mr. MORRIS.—All right.

A. Mr. Davis—I secured an appointment to the navy office, and I was keeping the books at Mr. Davis', and I told him when I—I had to go over there to the navy yard at a certain time, and in balancing up the books I told him that I couldn't account for \$42, there seemed to be a difference of \$42. And I left a memorandum to that effect with Mr. Davis, and told him,—I asked him, and he said he would do this, would have his man go through the books and see if it was correct or not, and I told [377—326] him that if this was an actual shortage of course I would pay it. And he had Mr. Grant, I think, go through the books, and he notified me later on that there was a hundred and forty-two dollars difference. Well, I says, “I would like to go over with Mr. Grant and look the matter over and check over the books,” and he said, “All right, very well” and we did, and there was a difference of \$142. And

(Testimony of J. A. Kettlewell.)

Mr. Davis went away at that time, and they let it run until he came back, and then I went to him and I said that I would like to go over them again. And we did, and we couldn't find where the error occurred, and so I, in order to make the matter straight, I paid Mr.—I gave Mr. Davis \$142, I gave him a note to straighten this up. And after this, after this shortage—it isn't shortage, but after this was found, after I left this note with Mr. Davis, he gave me a letter of recommendation to the navy yard, and everything was open and aboveboard, and he was paid this money, and it was simply an error that I never could account for, and I never denied it. No one accused me of taking any money. It was simply that come up in the ordinary course. Everybody had access to the cash, and I simply, in posting the books, found that there was \$42 that I couldn't account for, couldn't make the books balance, and later they found it should have been a hundred and forty-two. And I examined the books as thoroughly as possible with Mr. Grant and couldn't find that there was any error, so I straightened it up in order to do the right thing about it.

Mr. MORRIS.—I think that is all for the defendant, your Honor, at the present time.

Mr. SCHLESINGER.—Just a few questions, your Honor.

Q. Mr. Kettlewell, was it a part of your official duties to sell supplies to the Government?

A. No, sir. [378—327]

Q. Were you familiar with the rules governing

(Testimony of J. A. Kettlewell.)

your office? A. Yes, sir.

Q. Did you ever obtain permission from the Secretary of the Navy to enter into competition for sales of supplies for the Government? A. No, sir.

Q. Did you, during the time of your employment, maintain a store or stores, a warehouse or warehouses, in the city of Seattle? A. No, sir.

Q. You have mentioned a number of fictitious concerns, the creation of your own mind?

A. No, sir.

Q. Were you interested in any other fictitious concern?

A. I beg your pardon. You said the creation of my own mind.

Q. Yes, sir.

A. I rather object to that. It wasn't the creation of my own mind entirely.

Q. I see. Did you ever confer with Mr. Goldberg, the employee of the Great Western Smelting Company, about creating the firm of Lyman-Evans & Company? A. No, sir.

Q. Did you ever confer with this employee about creating the firm of Smith-Hunt & Company?

A. Mr. Goldberg, you refer to?

Q. Yes, sir. A. No, sir.

Q. Did you ever hear of a man named Peter Brandt? A. No, not of a man.

Q. Did you ever do business with the Government under that name? A. Yes.

Q. Did you confer with Mr. Goldberg concerning the use by you of that name? [379—328]

(Testimony of J. A. Kettlewell.)

A. No.

Q. Did you sell supplies to the Government under the names I have just mentioned? Yes or no.

A. Yes, with this explanation: I was not the only one.

Q. I haven't asked you that.

A. You asked me if I did. If I say yes, that limits the matter to me.

Q. Did you ever disclose to any merchant in Seattle that you were engaged in furnishing the Government supplies? A. No.

Q. Did you ever disclose to any merchant in Seattle that you were competing with them in Government business? A. No.

Q. Did you disclose to merchants generally having business with the Government that you were in a position to prevent them from selling supplies to the Government as you saw fit? A. I didn't—

Q. (Question repeated.)

A. No.

Q. Did these concerns, and other fictitious concerns under which you have operated, have a place of business, capital stock, assets of any visible character?

A. I rather object to the "other concerns."

Q. Well, now, won't you allow your former counsel, Mr. Riddell, to make these objections for you, please? You have no right to object.

A. I can't answer that—

Q. (Question repeated.)

A. The fictitious firms that I had connection with

(Testimony of J. A. Kettlewell.)

had no capital, but the other concerns, I don't know what the gentleman means [380—329] by the other concerns. I admit a number of these, but I don't want to be mixed in other concerns which I know nothing about.

Q. Well, is it not a fact, Mr. Kettlewell, that the only visible asset those concerns had was yourself, you were the chief asset of those concerns, were you not? A. No, sir, I won't say that.

Q. Did you keep a stock of goods on hand?

A. No.

Q. You did not. Under the names of these fictitious concerns, between 1908 and 1911 you sold various and sundry quantities of goods to the United States Government, did you not? A. Yes.

Q. You had talked with Mr. Goldberg, the employee of the Great Western Smelting Company, on numerous occasions, had you not? A. Yes, sir.

Q. Did you not state to him, as the representative of the Great Western Smelting Company, that unless the legitimate merchants accommodated you in the matter of moneys that Lyman-Evans & Company and other of your fictitious concerns, would get all of the Government business at this point? Yes or no. A. No, no, sir.

Q. Did you not say to Emar Goldberg, and other representatives in Seattle,—

Mr. ALLEN.—Just a moment, your Honor. Put in the names of the others.

Q. Did you not say to Mr. Goldberg that it would be better for dealers to be liberal with you rather

(Testimony of J. A. Kettlewell.)

than have competition within the navy yard? Yes or no. A. No.

Q. Did you not repeatedly importune the representative of the [381—330] Great Western Smelting Company for moneys, threatening, in substance, to “Club” it out of business? A. No, sir.

Mr. SCHLESINGER.—Did you not say to him that you had prevented other concerns from doing business with the navy yard where they had failed to accommodate you?

A. No, sir.

Q. Or words to that effect?

A. No, nothing of that kind.

Q. When was it that you first received money from Emar Goldberg, as claimed by you?

A. That first hundred dollars that I received from Mr. Goldberg, as I remember it, was in—was after—along about in January, latter part of January, I think, or February, first of February, somewheres around there.

Q. Did that go into the account of Lyman-Evans & Company, Smith-Hunt & Company, Peter Brandt, or Phillip McManus? Yes or no.

A. There was no account of those people at all.

Q. Did not Mr. Goldberg say to you that he was a mere employee of the Great Western Smelting Company, having charge of the branch in Seattle, that he had no interest in the business except as a salaried employee, and that he would communicate your demands for money to the head of the Great Western Smelting Company either at Chicago or San Fran-

(Testimony of J. A. Kettlewell.)

cisco? Yes or no.

A. No, he never said that.

Q. Never said that to you. Did you ever discuss with Mr. Goldberg the matter of your interest in the Perine Machinery Company of Seattle? A. No.

Q. Did you have any interest in the profits of that concern in its [382—331] dealings with the navy yard? Yes or no.

A. Yes, but with this explanation, that the Perine Machinery Company knew nothing of the profits that I derived from Mr. Wheeler, their representative; they knew nothing of the profits.

Q. Did you have a working contract or agreement with Mr. Wheeler, representing the Perine Machinery Company, that you were to get sixty per cent of the profits going to that concern from sales to this navy yard? Yes or no.

A. Yes, with this explanation: That we had a working agreement, but without any definite per cent. Mr. Wheeler was to pay me money for giving business to the firm.

Q. Didn't you state to Mr. Goldberg, this employee, that you had a fixed interest in the profits of the Perine Machinery Company and you should have a similar interest with other dealers who expected to do business with the navy yard? A. No, sir.

Q. And didn't you, in that same conversation, tell him, in a jocular spirit, that, so far as you were concerned, the Government was Lyman-Evans & Company, Smith-Hunt & Company, P. McManus and Peter Brandt, represented by you?

(Testimony of J. A. Kettlewell.)

A. Never had any such conversation at all.

Q. Did you not have all of these conversations with Mr. Goldberg and, not receiving from him any satisfactory reply, did you not write the letter which has been read to these gentlemen in the box? Yes or no, or a similar letter?

A. I don't just get the drift to that.

Q. Then I withdraw the question and keep it for you later on. How many transactions did you have with Mr. Wheeler for the Perine Machinery Company, roughly estimated, estimating within one or [383—332] two hundred, if you can?

A. There were a great many; I wouldn't attempt to estimate them.

Q. Did you not know, whilst you were engaged in these various transactions, that you were violating your oath of office as a Government clerk?

A. Yes.

Q. Did you know that you were violating your oath of office as you kept repeating these transactions?

A. Yes.

Q. Did you have any care as to the number of violations, felonies and misdemeanors and other crimes that you were continuously committing?

A. What was the question?

Q. (Question repeated.) —at the time you were committing them, of course.

A. I would like to say that—I can't say yes or no this way.

Q. Then I will not press the question. Do you recall, Mr. Kettlewell, stating to Mr. Goldberg that you

(Testimony of J. A. Kettlewell.)

had had at least one thousand transactions with Mr. Wheeler, and they were making money and conducting business without any difficulty or hindrance upon your part?

A. No, I couldn't have made that statement, because the number that you refer to, one thousand, never entered my head.

Q. I am not particular as to number in talking with you, Mr. Kettlewell.

A. You asked me if I remember a thousand. No.

Q. You didn't even mention 999, I presume?

A. No, never.

Mr. SCHLESINGER.—Did not Mr. Goldberg tell you he had no authority to enter into any such arrangement with you, your [384—333] best recollection, yes or no? A. No, sir.

Q. Did you have any letter-heads printed for these various fictitious concerns, Mr. Kettlewell?

A. No, I think not.

Q. Where did you receive your mail?

A. I told Mr. Morris, the letters were received at the address of 625, I think it was, Adler Street.

Q. Who is Mr. P. McManus?

A. He is a gentleman residing in Seattle.

Q. Is he a relative of yours?

A. A distant relative.

Q. Did you operate with the Government under his name, with his consent or without his consent?

A. He did business with the Government, if that is what you mean.

Q. Well, did you invite him to submit bids?

(Testimony of J. A. Kettlewell.)

A. As I invited other people to submit bids.

Q. Did he have a warehouse in Seattle, or a store, merchandise store?

A. I don't know whether—he had no store. Whether he had a warehouse or not, I don't know.

Q. In other words, your familiarity with your relatives doesn't extend to giving you that knowledge? A. What is that?

Q. I withdraw that. Can you estimate, Mr. Kettlewell, how many frauds you have committed on the Government in number, about? A. No, sir.

Q. Can you estimate how many forgeries you have committed against the Government?

A. No, sir. I wish to say this in explanation of that answer, that this was all a part of one conspiracy.

Q. You said that so often. [385—334]

A. These are mere details.

Q. You said that very often.

A. And it is true.

Q. And I suppose the jury will take it in the light of your previous answer.

Mr. SCHLESINGER.—Did you furnish to Mr. Hutson, through your erstwhile attorney, Mr. Riddell, a partial list of the offenses that you had committed up to that time—what date was that, please, Mr. Riddell, when you received that list from him, about the date?

Mr. RIDDELL.—I never received any list from him.

Mr. SCHLESINGER.—You did not?

(Testimony of J. A. Kettlewell.)

Mr. RIDDELL.—No.

Mr. SCHLESINGER.—What date was it that you furnished a list to the United States Attorney, either personally or through your former counsel, containing a list, a partial list, of your then committed crimes, about what date?

A. I don't know that I ever submitted a list to anyone.

Q. Of course, you did testify in this Court, did you not, in the trial of the Government vs. Mr. Meyer, the defendant here, you remember that fact?

A. Remember that I said that there was a list?

Q. Do you remember the fact that you testified as a witness? A. Oh, yes; yes.

Q. Were you not told by your attorney, Mr. Riddell, or Mr. Hutson, that you had committed enough offenses as a Government employee to justify a light sentence, and did he not tell you that he would arrange and bring about a compromise upon one indictment, which would simply mean a few months of imprisonment?

A. No, sir; nothing of that kind was ever talked about, not in that way. [386—335]

Q. Well, not in that way. Mr. Kettlewell, I am not quite so technical as you. Was that it in substance?

A. I can't say that. I admitted to these offenses. I don't understand your question exactly. I admitted this thing was done; I didn't make any bones about it. They had the goods on me, so I didn't make any bones about it.

(Testimony of J. A. Kettlewell.)

Q. Mr. Kettlewell, after your arrest, did you not have on hand a large quantity of hexagon nuts of various sizes which you had purchased? A. Yes.

Q. Did you not make such a compromise as enabled you to dispose of those nuts and receive the money therefor?

A. I sold the nuts, but not to the Government.

Q. Sir?

A. The nuts were sold, but not to the Government.

Q. But you sold those nuts to some private individual and retained the moneys, did you not?

A. Yes. I bought them and I sold them.

Q. Has the Government ever brought any case or cases against you to compel you to disgorge any moneys that you had received, yes, or no?

A. This had nothing to do with the Government.

Q. Won't you please answer my question?

A. I can't. I don't want to mislead you or put myself in a bad light.

Q. (Question repeated.) A. No.

Q. Did you not sell those nuts, amounting to how many thousand pounds, by the way, to the best of your recollection?

A. I think there were about 40,000 pounds.

Q. 40,000 pounds. Did you not sell those nuts, amounting to 40,000 pounds, after your arrest, under the advice of your then [387—336] counsel, Mr. Riddell?

A. No, I never asked Mr. Riddell anything about it.

Q. Did you consult with him about it?

(Testimony of J. A. Kettlewell.)

A. About the nuts?

Q. About selling them.

A. No, my private property; I sold them to get rid of them.

Q. Under whose name did you purchase those nuts, which one of the many fictitious concerns, if you recall? A. I can't recall just now.

Q. I will not compel you to tax your memory; there are so many names. Did you transact any business with the Government during your few months of incarceration under your plea of guilty to one indictment, yes or no?

A. I do not understand that.

Q. (Question repeated.)

Q. Did you continue selling supplies to the Government under fictitious names whilst you were confined? A. No.

Q. Mr. Kettlewell, was immunity extended to you by the Government's officials covering all of these unindicted transactions as well as those upon which you were indicted?

A. No immunity was rendered to me in any respect.

Q. Well, indictments were dismissed, were they not? A. Yes, sir.

Q. And you were not prosecuted on those contained in the list which you had furnished, yes or no?

A. I didn't say that I furnished a list. I can't answer that.

Q. You didn't say you had furnished a list?

A. I don't think that I did.

(Testimony of J. A. Kettlewell.)

Q. Let me call your attention, Mr. Kettlewell, to your testimony [388—337] given in the trial against Mr. Meyer, appearing at page 429: “Subsequent to your arrest on the 28th day of March, and up to the time that you entered your plea of guilty in this court in September, is it not a fact that you furnished to Mr. Hutson, the Deputy District Attorney, and to other persons connected with the Government, all the information you had relative to your transactions, Mr. Wheeler’s transactions, the Perine Machine Company?” Answer, “I furnished the Government all information concerning my own transaction, and where those transactions of mine intermingled with other people’s transactions, I was compelled to tell that also.”

A. Yes, certainly.

Mr. ALLEN.—You spoke about a list.

Mr. SCHLESINGER.—Did that information appear in the shape of a list? A. No.

Q. Or did you give it by mere word of mouth, yes or no?

A. Well, how can I answer yes or no to that?

Q. Well, how was the information imparted?

A. Well, I can tell that.

Q. By a list or by word of mouth?

A. I would like to say how it was given.

Mr. ALLEN.—That is what he wants, Mr. Kettlewell. Go ahead.

Mr. SCHLESINGER.—How was it given, by a list or word of mouth?

A. The Government officials went through the

(Testimony of J. A. Kettlewell.)

records and would bring these folders and interrogate me about them and I told them about each particular case.

Q. Have you ever been prosecuted, placed upon your trial, with respect to any one of these transactions, yes or no?

A. No; with this explanation, that a trial wasn't necessary, as I [389—338] admitted the facts.

Q. Did you ever have occasion to raise the bids of Perine & Company for potato peelers? A. Yes.

Q. Did you alter it at your own sweet will and without consultation with your superior officers whenever it suited your purpose? A. Yes.

Q. Did you have any consultation with the Paymaster with respect to any of these matters?

A. No, with this explanation, that no illegal matters were ever brought up. I consulted him in regard to the bids in a general way, but he knew nothing about the illegal part of it.

Q. You for many years systematically deceived him, did you not? A. Yes.

Q. Have you been assisting the prosecution in this case, Mr. Kettlewell? A. I can't say that I have.

Q. Have you not been in constant consultation with Mr. Riddell, the present prosecutor here, and your former attorney?

A. He has asked me a great many questions and I have answered them.

Q. And you have done that every day for some time, have you not? A. No, sir; not every day.

Q. Well, you have done it on many occasions?

(Testimony of J. A. Kettlewell.)

A. Oh, yes; yes.

Q. Have you aided him in these examinations of these numerous documents here introduced in evidence?

A. They have called my attention to these papers, yes.

Q. And you have assisted in the examination?

[390—339] A. Yes.

Q. Was it possible, Mr. Kettlewell, for any merchant transacting business with the Government to prevent you from passing on the bids or examining the papers? A. I don't understand that.

Q. Well, I withdraw it. Is it not a fact that merchants transacting business with the Government were compelled to have that business done through you? A. Oh, no, not necessarily.

Q. Didn't you pass on bids and papers, as you have testified?

A. Yes, but it wasn't necessary—the Paymaster took it out of my hands sometimes.

Q. Mr. Kettlewell, *are to-day* doing business with the navy yard under any fictitious names?

A. No, sir.

Q. Do you consider, Mr. Kettlewell, that you are under any more obligation to tell the truth here than you were to tell the truth to your superior officials whilst you were under oath? A. Yes, I do.

Q. Did you ever have any conversation of any kind or character with any of the eastern officials of the Great Western Smelting Company, or any of the San Francisco officials?

(Testimony of J. A. Kettlewell.)

A. Not that I know of.

Q. Did you ever meet a Mr. Alper, the head of that concern?

A. I think that Mr. Goldberg introduced me in the office, if I remember.

Q. You met a Mr. Alper?

A. Yes, I think so. I very faintly recollect that.

Mr. SCHLESINGER.—I want to call your attention, Mr. Kettlewell, to what purports to be a copy of a public bill. Do you [391—340] recognize that as a true copy?

A. Yes, sir, I think that is a true copy.

Q. I will call your attention to an endorsement upon that bill reading—

Mr. ALLEN.—Pardon me, before you read it—

Mr. SCHLESINGER.—Do you wish to see it, Mr. Allen?

Mr. ALLEN.—I would like to.

Mr. SCHLESINGER.—You have the original.

The COURT.—Defendants' exhibits?

Mr. SCHLESINGER.—Yes, your Honor.

(Paper referred to marked Defendants' Exhibit "G.")

Q. Mr. Kettlewell, you knew there was a rule requiring bids to come from legitimate bidders, did you not? A. Yes, sir.

Q. You knew that there was a rule requiring bids to come from persons engaged in trade, did you not?

A. Yes, sir.

Q. And you knew all of those matters when you were engaged in these various transactions?

(Testimony of J. A. Kettlewell.)

A. Yes, sir.

Q. Now, calling your attention to this stamp (showing), will you kindly read that aloud so the jury may hear you?

Mr. ALLEN.—Is that introduced in evidence?

Mr. SCHLESINGER.—Yes, and marked Exhibit “G.”

A. “United States Navy Pay Office, Seattle, Washington. Paid May 26, 1908. Robert H. Orr.” The rest is blurred.

Q. And that is marked “Paid,” is it, on May 26th, 1908. I will ask you whether the check was delivered together with that paper upon that date?

A. I think that it must have been, yes.

Q. You think it must have been? [392—341]

The COURT.—What date was that?

Mr. SCHLESINGER.—May 26th, 1908. If it had not been so delivered it would not bear the imprint “Paid,” would it? A. No, I think not.

Q. Do you know a man named Charles Farley?

A. Charles Farley?

Q. Charles Farley. Do you know a man named Charles Farley? A. I don’t recollect the man.

Q. Charles H. Farley?

A. I don’t recollect the man, sir.

Q. Did you have a conversation with Charles F. Farley, or H. Farley, in Seattle on last Monday, in which you said to him, “It would be safe on your part in testifying to anything, as your former attorney, Mr. Riddell, would protect you,” or words to that effect? A. No, sir; I certainly did not.

(Testimony of J. A. Kettlewell.)

Q. You certainly did not? A. No, sir.

Q. You say you don't know any such man?

A. I don't know the name.

Q. You don't know the name. Well, do you know any man who has a name similar to that?

A. No, I can't say that I do.

Q. Where were you on last Monday at about the hour of 11:30 o'clock?

A. I think that I was probably in this building.

Q. Where did you have luncheon on that date?

A. I can't recall that, either.

Q. That is all on that score.

A. Frequently I don't take lunch. [393—342]

Mr. SCHLESINGER.—That is all.

Mr. ALLEN.—Mr. Farley in the courtroom?

The COURT.—Proceed with rebuttal, if there is any.

(By Mr. VANDERVEER.)

Q. Mr. Kettlewell, I was not present during your direct examination. I am informed that you testified that when you received from the Storekeeper's Office at Bremerton the requisition for this 50,000 pounds of zinc the time limit for delivery was fixed at 15 days after the award?

A. The requisition read 15 days.

Q. And that you changed that to five days after award? A. Yes.

Q. Did you do that at the request of Mr. Corder?

A. No, sir.

Q. Or for Mr. Corder? A. No, sir.

Q. Or with his knowledge? A. No, sir.

(Testimony of J. A. Kettlewell.)

Q. Do I understand also that you withheld the sending out of the proposal for a certain length of time? A. Yes.

Q. Did you do that at Mr. Corder's request or suggestion, or with his knowledge? A. No, sir.

Q. Or in any manner for his benefit?

A. No, sir.

Q. There is a certain advantage, is there not, in receiving proposals as early as possible? I am informed that you testified that you delivered in person to the Seattle Hardware [394—343] Company, Schwabacher, and to other people, a number of the proposals which were sent out on this requisition?

A. Yes.

Q. And that you mailed Mr. Corder's—that you sent Mr. Corder's to him by mail?

A. I think that was mailed, yes.

Q. Did you send his before or after you delivered the others, or did you mail it the same day that you delivered the others?

A. Mailed the same day, I presume.

Q. So that, in the natural course of the mail deliveries, he probably did not receive his proposal until the day after you had delivered them to the other people? A. Probably not.

Q. There could have been, then, no intention on your part, or purpose on your part, to favor him in that connection? A. No, sir.

Q. Did you ever have any conversation with Mr. Corder prior to the making of the award on this requisition regarding any matter pertaining to this

(Testimony of J. A. Kettlewell.)

zinc? A. No, sir.

Q. Did you see Mr. Corder or he come to see you about the matter at all? A. About this matter?

Q. About this zinc. A. No, sir.

Q. When was the first time that you did see Mr. Corder in any connection with this particular zinc transaction?

A. Mr. Corder was in the office, in the navy pay office, when the bids were opened.

A JUROR.—Talk louder.

A. Mr. Corder was in the Pay Office when the bids were opened. [395—344]

Mr. VANDERVEER.—It is customary, is it not, for contractors who bid on a job to be present when the bids are opened?

A. Yes.

Q. I understand that when the bids were opened it was discovered that Mr. Silverstone was the lowest bidder? A. The Fowler Metal Company, yes.

Q. Or the Fowler Metal Company. And Mr. Corder left without saying anything, as you recall, about it, and came back later?

A. Yes, he left the office at that time. He didn't say anything at the time—

Q. Did he, at the time the bids were opened, do or say anything which indicated that he believed this Fowler Metal Company bid was not a legitimate bid, the time that the bids were opened?

A. He didn't say anything at the time the bids were opened.

Q. And, so far as you know, he believed, his ac-

(Testimony of J. A. Kettlewell.)

tions indicated at least, at that time he believed it was a *bona fide* bid? A. Yes, I presume so.

Q. And later he came back and complained it was not a *bona fide* bid?

A. He came back within an hour or so and made a very strong protest against the bid being awarded to Fowler Metal Company.

Q. And that is just what any honest contractor ought to do and would naturally do, isn't it?

A. I would think so.

Q. Did you at any time, Mr. Kettlewell, enter into any conspiracy with Mr. Corder to defraud the Government in the purchase of this zinc? A. No, sir.

Q. Or any conspiracy of any kind relating to this zinc? A. No, sir. [396—345]

Q. Or any agreement or confederation of any sort with reference to this zinc? A. No, sir.

Mr. VANDERVEER.—That is all.

(By Mr. SCHLESINGER.)

Q. One-half of this zinc was furnished by Corder & Company, was it not?

A. I don't know anything about that.

Mr. SCHLESINGER.—That is all.

(By Mr. VANDERVEER.)

Q. When was the first time, Mr. Kettlewell, you ever saw Mr. Silverstone?

A. Either the day the bids were opened or the day before; the day of the opening of the bids, I think.

Q. The occasion, without reference to the time, was when he brought in his bid, was it?

A. Yes, when he made inquiry.

(Testimony of J. A. Kettlewell.)

Q. And whatever conversation you had with him then was just such a conversation as you would have with any bidder? A. Yes, sir.

Q. And the next time you saw him when the bids were opened?

A. I think he was there when the bids were opened. I am not positive, but I think he was there.

Q. Well, did you at any time have any conversation with him in the course of which you conspired or confederated or agreed in any manner with him?

A. No, sir.

Q. Your dealings with him were just what they should be with any [397—346] contractor?

A. Yes, sir.

Mr. VANDERVEER.—That is all.

On redirect examination the witness testified as follows:

(By Mr. ALLEN.)

Q. Mr. Kettlewell, counsel has asked you at considerable length in regard to a ferromanganese deal. That was in the year 1902, was it not?

A. I think it was, sir; I don't remember the exact date.

Q. Well, if that is the date that is shown by the folder here, would you say that was approximately the correct date?

Mr. SCHLESINGER.—22d of January, 1910.

Mr. ALLEN.—22d of January, 1910, the date supplied me by counsel. If the folder so says you would say that was the time?

(Testimony of J. A. Kettlewell.)

A. If the folder says that, that is right.

Q. In other words, that was about two years after Mr. Goldberg handed you this hundred dollars; isn't that true? A. Yes.

Q. Now, in this ferromanganese deal Lyman-Evans & Co.—explain to the jury just what that requisition called for and how much was actually delivered?

A. The requisition calls for 4,000 pounds of ferromanganese, lump, 80 per cent pure.

Q. Take a look and find how much was delivered.

A. The Inspection Call from the navy yard shows that 4125 pounds were delivered.

Q. What was the original requisition for, how much? A. 4,000 pounds. [398—347]

Q. And how much was delivered?

A. 4125 pounds.

Q. Is that the acceptance, now, or the delivery?

A. That was the amount accepted under that requisition.

Q. How much was delivered? Does it show there how much was delivered or how much was rejected at that time?

A. The receiver's report shows that three barrels were delivered, and the bill, the dealer's bill calls for 4,400 pounds, and 4,125 pounds were actually received, and noted that 275 pounds were not received.

Q. 275 pounds not received? A. Not received.

Q. It was short that sum?

A. Evidently, yes, sir.

Q. This Lyman-Evans concern, this fictitious con-

(Testimony of J. A. Kettlewell.)

cern, tell the jury, Mr. Kettlewell, who were the parties that composed this fictitious concern of Lyman-Evans & Company, who was interested in it and what was their interest? A. Myself and Mr. Meyer.

Q. Yourself and Mr. Meyer. You mean by Mr. Meyer the defendant sitting here? A. Yes.

Q. When you had this requisition come through for 4,000 pounds of this particular kind of ferromanganese, lump manganese, what did you order from the east, how much did you order from the east?

A. I think it was 8,500 pounds, if I remember correctly.

Q. Calling your attention to this telegram (exhibiting paper to witness), see if that refreshes your recollection.

A. 8,500 pounds, as I recollect it and as the telegram states.

Q. That is in accordance with that telegram, then, as you [399—348] understand it?

A. Yes, sir.

Q. In other words, you ordered 8,500 pounds and had a 4,000 pound requisition then in sight. What became of the other 4,500 pounds?

A. It was all shipped to the yard at one time.

Q. It all went to the yard at one time. Well, what became of that excess delivery of 4,500 pounds?

A. A subsequent requisition was prepared at the navy yard to cover that.

Q. Calling your attention to Plaintiff's Exhibit Number "59," which is requisition No. 192, Naval Supply Fund—

(Testimony of J. A. Kettlewell.)

The COURT.—What exhibit?

Mr. ALLEN.—Plaintiff's Exhibit "59."

The COURT.—No, that is not the number.

The CLERK.—That is "59" in the old case, last year.

Mr. ALLEN.—I thought it was in this case, I beg your pardon. See if you can identify that, Mr. Kettlewell.

A. I can.

Mr. ALLEN.—We ask that be marked for identification.

(Same being marked Plaintiff's Identification "35.")

Q. This is the folder for requisition No. 192, Naval Supply Fund, series 1910. We offer this in evidence, gentlemen.

Mr. SCHLESINGER.—What is that?

Mr. ALLEN.—This is the folder for 4,000 pounds of your ferromanganese.

Mr. MORRIS.—Mr. Schlesinger, I know what it is and we have no objection.

Mr. SHIPLEY.—It is the same folder we offered.

Mr. ALLEN.—It is now admitted, by stipulation of counsel, in [400—349] evidence.

(Folder referred to received in evidence and marked Plaintiff's Exhibit "35.")

Q. Tell the history of this requisition to the jury. You have 4,500 pounds of ferromanganese lying over on the dock. What is the connection between yourself, if there is any?

A. Before this requisition was made, and at the

(Testimony of J. A. Kettlewell.)

time the previous requisition was made, it was agreed between Mr. Meyer and myself to order 4,500 pounds in excess. Mr. Meyer agreed to have a requisition come through to cover this, and this is the requisition that was made.

The COURT.—That number “35”?

Mr. ALLEN.—That is Plaintiff’s Exhibit “34.”

Q. In other words, he put through that requisition and took up the excess? A. Yes.

Mr. MORRIS.—We object to the leading form.

The COURT.—The witness has already testified to it.

Mr. ALLEN.—Is Mr. Farley in the courtroom, just referred to? Will you stand up, Mr. Farley, if you are here, I want you to be identified. (No response.) Mr. Farley doesn’t seem to be present. Counsel propounded some questions to you in regard to other transactions between yourself and other parties here, or parties who are proper parties to this action. Explain to the jury, did each and all of those transactions occur long subsequent to the time when Mr. Goldberg handed you the hundred dollars out in the hall down in the Navy Pay Office?

A. What requisition do you refer to?

Q. I am referring to these transactions about which counsel have at such length interrogated you here, these gentlemen on the [401—350] other side.

A. As a matter of fact, I know these things happened. I don’t remember the dates. The folders will show that.

(Testimony of J. A. Kettlewell.)

Q. I will ask you particularly about the Smith-Hunt signal chain transaction. The folder shows that is of the year, approximately, 1909. Does that conform to your recollection in the matter, April 8th, 1909? Take a look at it and see if that is approximately right. A. Yes, that is the chain.

Q. That is the chain episode?

Mr. ALLEN.—In other words, this occurred a year and three months subsequent to the time Mr. Goldberg handed you the hundred dollars out in the hall?

Mr. SCHLESINGER.—I object as calling for a conclusion.

The COURT.—He can give the facts about these matters to which his attention was called and let the jury draw the conclusion from the other testimony.

Mr. ALLEN.—Some mention was made of the Perine Machinery Company and the working of the company. Who was interested with you in the transaction?

A. Mr. Wheeler.

Q. Mr. Wheeler. Was Mr. Meyer tangled up in the matter as well? A. Yes, sir.

Mr. SHIPLEY.—We object to this for the reason this is one of the matters involved in the cause for which Mr. Meyer, one of the defendants in this case, was tried and found not guilty by a jury in this courtroom.

The COURT.—Objection overruled. That is a matter for the jury.

Mr. SHIPLEY.—Exception.

The COURT.—Exception allowed. [402—351]

(Testimony of J. A. Kettlewell.)

Mr. ALLEN.—And this Perine working agreement, in which Mr. Meyer had his interest as well, was about a year after this time that Mr. Goldberg gave you the hundred dollars, is that true?

A. Yes, sir.

Mr. ALLEN.—Well, leading back to that question merely. You stated that when requisition 438 went through that a certain sum of money was paid you by Mr. Goldberg. Now, state to the jury what Mr. Goldberg said, if anything, at that time with reference to the sum which he was to pay, or did pay, to the defendant Meyer.

Mr. SCHLESINGER.—Now, if your Honor please, that is a part of their case in chief—

The COURT.—This is not redirect and I have permitted him to ask it as an original question.

Mr. SCHLESINGER.—Whatever your Honor says.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

A. I don't get the question just yet.

Mr. MORRIS.—We object to that, your Honor, as gone into in chief.

Mr. ALLEN.—Read the question. (Question repeated.) —which had been paid.

Mr. MORRIS.—I am objecting to it on the ground it was gone into by the Government in chief.

Mr. RIDDELL.—Did Mr. Goldberg tell you why he had to pay Meyer \$500.00 and only pay you \$350.00?

Mr. SCHLESINGER.—That has been gone into,

(Testimony of J. A. Kettlewell.)

or should have been, if not.

The COURT.—Well, let him answer this question.

A. Yes.

Mr. RIDDELL.—What did he say?

A. He said that he could only give me \$350.00 on this, that he had [403—352] to promise to give Meyer \$500.00 before the requisition was prepared, and that he had to keep that promise in order to facilitate other business that might come to him.

Mr. ALLEN.—One more question, Mr. Kettlewell, on that requisition for signal chain.

Mr. SHIPLEY.—We object to counsel for the Government sitting here and nodding his head and affirming statements made by his own witness on the witness-stand, which was done three times during this last answer.

The COURT.—I saw counsel on both sides nodding their head, so neither side need take exceptions to that.

Mr. ALLEN.—Mr. Kettlewell, something has been said regarding the signal chain. That original requisition was for two thousand feet, was it not, I mean the original—how much was the requisition, as you recall it?

A. One thousand feet.

Q. One thousand feet. How much did you order from the east, this fictitious firm?

A. Two thousand feet.

Q. Two thousand feet. Mr. Meyer, the defendant, was interested in that concern, was he not?

A. Yes.

(Testimony of J. A. Kettlewell.)

Q. What became of the excess delivery of one thousand feet of chain?

A. Mr. Meyer caused a requisition to be prepared to cover that extra thousand feet.

Q. And that went through, did it? A. Yes.

Mr. SCHLESINGER.—I think, your Honor, he has exceeded the limit.

The COURT.—This is rebuttal now. I will frankly state the testimony of the other answer was just as before. [404—353]

Mr. ALLEN.—Mr. Kettlewell, when you found, as you have stated in your cross-examination, that the Government officials had the goods on you, to use your own expression, with what officer, prosecuting official, of the United States Government did you come in contact?

A. With Mr. Hutson.

Q. Mr. Hutson. He is now an attorney of this city, is he not? A. Yes.

Q. When you talked to Mr. Hutson did he tell you, or did he not, that you were entitled to the service of counsel in the matter? A. Yes.

Mr. ALLEN.—What did he tell you with reference to your rights in the employment of counsel?

A. He advised me to—he said—“I don’t see you need much counsel; you had better get some one to represent you.”

Mr. ALLEN.—Mr. Kettlewell, hadn’t you, as a matter of fact, stated to the secret service employees of this city substantially all the facts; hadn’t you confessed, in other words?

(Testimony of J. A. Kettlewell.)

Mr. ALLEN.—Hadrn't you stated the facts regarding a number of these transactions, if not all of them, before you actually came in contact with the prosecuting officials?

Mr. SCHLESINGER.—We object to that on the ground it calls for a self-serving declaration; it is not redirect examination; it is not rebuttal, and does not tend to prove or disprove any issue here of any kind or character.

The COURT.—I think it is a proper inquiry on cross-examination as to whom the declaration was made first. Proceed.

Mr. ALLEN.—Read the question.

Q. (Question repeated.) A. Yes. [405—354]

Q. Was your statement as made to those secret service men, was it made or coupled with any promise of any kind from any prosecuting official of the United States Government?

Mr. SCHLESINGER.—We object as calling for an opinion of the witness; it is immaterial, incompetent and irrelevant, not redirect examination, and self-serving.

The COURT.—No, I don't think so.

Mr. ALLEN.—Didn't Mr. Hutson—you have had some experience now with court and men—didn't Mr. Hutson at all times, in his relation to you, treat you in a courteous, gentlemanly way in which you would expect a prosecuting attorney of the United States to treat any man charged with crime?

Mr. SCHLESINGER.—I object, as Mr. Hutson is not upon trial here, and is immaterial.

(Testimony of J. A. Kettlewell.)

Mr. ALLEN.—Have you any criticism to make to this jury in regard to anything in the conduct of Mr. Riddell with reference to his conduct to you, or anything wrong, at this time?

A. No, sir, I have not.

Mr. ALLEN.—That is all.

On *redirect cross-examination* the witness testified as follows:

(By Mr. SCHLESINGER.)

Q. You are a pretty good accountant?

A. I am not an expert accountant.

Q. You have heard the evidence here this morning to the effect that Mr. Corder, now a bankrupt merchant, was entitled to receive one-half of the proceeds of that zinc sale, did you not?

A. Did I hear that?

Q. Did you hear that testimony this morning?

A. No. [406—355]

Q. One-half of the gross proceeds, without deduction? A. No, I didn't hear that.

Q. Then I won't question you on it. That is all.

(By Mr. MORRIS.)

Q. Mr. Kettlewell, it is a fact, is it not, that all of these folders and other matters that have been propounded to you by Mr. Allen in his redirect examination relative to your transactions with the navy yard were gone into in the former case that was tried in this court a year ago when this defendant Meyer was defendant? A. Yes, I think all of them.

Q. Everything? A. I think so.

(Testimony of J. A. Kettlewell.)

Q. Everything was submitted to the jury fully and completely?

Mr. MORRIS.—You did testify in regard to each and every transaction that took place between yourself and the Government, as shown by these respective folders to which your attention has just been directed?

A. Yes, I think those were all brought in.

Q. And at that time you claimed that each and every one of these transactions involved this defendant Edwin F. Meyer? A. I don't remember.

Q. And so testified?

Mr. ALLEN.—That was another case, an entirely different state of facts.

The COURT.—Objection sustained. Note an exception. [407—356]

[**Testimony of Charles F. Hutson, for Plaintiff.**]

CHARLES F. HUTSON, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

My full name is Charles F. Hutson, and my vocation is that of an attorney at law in the City of Seattle. I have been here since 1906. I was once assistant United States Attorney during most of the time from 1906, until I think February, 1912. During that time Mr. Todd was the United States District Attorney. I know Mr. Riddell—he is sitting here in the courtroom. I know Mr. Kettlewell, who is

(Testimony of Charles F. Hutson.)

charged with the crime with the navy pay office. I cannot approximately give the time when I first met Mr. Kettlewell, except that it was at the time of the navy pay investigation, as I have not looked up the records.

Q. That was about, to refresh your recollection, about the month of March, 1910. That was at about that time, then? A. Approximately.

Q. 1911, rather? State to the jury exactly what was said between yourself and Mr. Kettlewell, in so far as you can recall.

Mr. KERR.—I object to that, your Honor, as incompetent and improper. None of these defendants were present.

Mr. KERR.—Now, if your Honor please, Mr. Kettlewell explained the manner in which he was directed by Mr. Hutson to see Mr. Riddell, and it stands there in that case.

Mr. ALLEN.—I want to suggest in the former trial, Mr. Morris has, I am informed, spent a good deal of time talking to the jury about some imaginary deal in regard to the deal.

Mr. MORRIS.—Somebody has misinformed you. Mr. Morris was only before the jury about fifteen minutes.

Mr. MORRIS.—May it please your Honor, we appeal to the Court, then, [408—357] to instruct the district attorney not to make those statements.

The COURT.—I mean that suggestion to the district attorney as well as to yourself.

Mr. MORRIS.—I respectfully submit I am not en-

(Testimony of Charles F. Hutson.)

titled to it in this instance, because I have not done anything.

The COURT.—I appreciate this wasn't your fault this time. I thought everybody understood it. I don't believe that it would be proper to do that. That is not a matter they have a right to cross-examine the witness upon, and it isn't a matter of corroboration, but it would be certainly gross error to permit the conversation between the United States Attorney and the witness.

Mr. ALLEN.—Very well. That is all, Mr. Hutson. [409—358]

[Testimony of E. Silverstone, for Plaintiff.]

E. SILVERSTONE, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

I wish at this time to voluntarily testify before the Government. My initials are E. I have lived in Seattle about ten years. I came up here and entered into the wholesale cigar business under the name of Simon-Barman & Company. I was interested in that concern for about three years. I was next interested in the Herald Hotel with my father in law. I am still interested in the hotel. I know the defendant, Mr. Goldberg. I have met Mr. Corder, but I do not know him personally. I have known Mr. Goldberg about ten years. It might be a little longer than that. I knew Mr. Goldberg's wife when she was a little girl. She used to play with my sister,

(Testimony of E. Silverstone.)

and when we came to Seattle we naturally formed a very friendly feeling towards each other. Mr. Goldberg lived at the Herald Hotel up on the hill. In the year 1908, I recall putting in a bid to the United States Government in the name of The Fowler Metal Company. Mr. Goldberg met me in the lobby of the hotel and asked me if I would put in the bid. I cannot give you the exact words, but that he wanted to slip one over on one of his competitors, and I told him I would. I think it was the next morning after breakfast he waited for me out in the lobby, and he had the form, and asked me to come down in the lunch room, which is a floor lower than the lobby, and we used it as a sort of a dance-hall, and he asked me if I would fill in the weight and amount, and so forth, that he had on a piece of paper. That was in the early part of April, 1908. I remember—

Q. Calling your attention to the part of Plaintiff's Exhibit Number [410—359] "7," the same being proposal for supplies or services found therein. I will ask you to take a look at that and see if you can remember that (handing same to witness).

A. I do.

Q. I will ask you what part Mr. Goldberg had in the preparation of that proposal?

A. As far as I can remember, it was all the typewritten part, and, if I am not mistaken, that "hundred" up there, that "hundred" (showing).

Q. Was in there? A. I think so.

Q. In other words, you didn't put it in typewriting yourself? A. No, sir.

(Testimony of E. Silverstone.)

Q. And, as your recollection is now, you didn't put in the "hundred" in that column (showing)?

A. No, I don't think so.

Q. I will ask you as to the signature on the bottom—but state before that, when this request was made what did you say to Mr. Goldberg, with reference to your authority to act for this company?

A. After the bid was made out down to the part of the signature, he asked me to fill it out in the name of the Fowler Metal Company.

Q. You mean to sign it in that name?

A. Yes. And I asked him if he had authority from the Fowler Metal Company, and he said it was part and parcel of their concern at San Francisco, that their concern had bought out the Fowler Metal Company, and he had authority to sign that name.

Q. What did he say to you, if anything, with reference to getting written authority in regard to it?

A. Well, I took Mr. Goldberg's word for that statement, because I [411—360] have known him a number of years, and known him quite closely. And after I had signed it he said, "I will get you written authority for that if you want it." And I says, "Well, perhaps you had better get it for me." There was nothing further said about that until a later day, when I mentioned that fact to him, and he says, "Why, if you want," he says, "I will have them telegraph you." I said, no, that wasn't necessary.

Q. Now, after you had signed this proposal what did you do with reference to a visit to the office, to

(Testimony of E. Silverstone.)

the navy pay office here in the city of Seattle?

A. Mr. Goldberg asked me to take that up to the navy pay office, and I asked him where it was, and he told me it was up in the Walker Building, so I immediately took it up there to the office. After I handed it to a gentleman back of the counter he started to go over to say something to some gentleman sitting in sort of an alcove,—

Q. Who went over?

A. The clerk in the office that I handed the bid to.

Q. Was that Mr. Kettlewell? A. I think so.

Q. According to your best recollection that would be the man? A. That was the gentleman, yes.

Q. What did you do when you went to the navy pay office there in regard to inspection of the board, or anything of that sort?

A. When he took this bid over to the gentleman sitting in the alcove, to kill time I turned around, and I think it was right at the back of me, back of the desk in the office, or the counter, and I looked at the board there, which I think was several applications for bids and things of that kind on.

Q. Prior to your visit there what statement, if any, was made to you by Mr. Goldberg with reference to his relation toward [412—361] Mr. Kettlewell?

A. Well, there was nothing that I can recall that he mentioned Kettlewell's name, but I asked him, "If they ask me anything about this metal what I should say, because I knew nothing about metal." He says, "You just hand it in to the gentleman up

(Testimony of E. Silverstone.)

there, the clerk, he is a friend of mine, and you don't have to have anything to say."

Q. This proposal is dated April 11, 1908. Would it be your recollection that was the date of the proposal as you signed it at that time, April 11, 1908?

A. I think that was about the date.

Q. You think that was about the date?

A. The date that was filled in there was the date.

Q. How long was that before the day of the award, if the award was made on the 15th, how many days before that did you sign it?

A. If the award was made on the 15th it would be four days.

Q. In other words, you signed this proposal about on the 11th, as I understand you?

A. If that is the date.

Q. And the award was made on the 15th. Were you present at the award, as a matter of fact, do you remember?

A. I was not.

Q. You don't think you were up there?

A. No, sir.

Q. After the award was made when did you next hear from Mr. Goldberg in connection with the matter?

A. I don't remember just how long afterwards, but I think it was a short while afterwards he called me up by phone and told me he would like to see me. And I met him some place down town, and he said one of the competitors was making a holler, and he wanted me to come down with him and be introduced to him, and to say that [413—362] I overheard a

(Testimony of E. Silverstone.)

conversation over the telephone, and that was why I put in that bid, and that he should be more careful in his conversation, or to pass it off that way.

Q. What were you to tell this competitor, you had overheard a conversation over the telephone—

Mr. ALLEN.—Who was this competitor who seemed to be disgruntled?

A. Mr. Goldberg took me down and introduced me to Mr. Corder.

Q. This Mr. Corder here (showing)?

A. Yes, sir.

Q. And when you went down there what was said by you or by any one of the three of you?

A. Mr. Goldberg introduced me, and I don't know—he made some remark there, and I—

Mr. SCHLESINGER.—It seems to me, if your Honor please, that any discussion between these gentlemen not connected with this transaction would not be at all material here. The question whether or not the Great Western Smelting & Refining Company had a grievance against the Corder Company, how can that be material? They had some temporary dispute, afterwards amicably settled.

The COURT.—Overruled.

Mr. SCHLESINGER.—Note an exception.

A. I made the remark to Mr. Corder that I had overheard his conversation on the telephone and put in the bid, and in a joking way I said to him, he wanted to be more careful when he was talking over the phone, and he laughed and said, "I guess it is a

(Testimony of E. Silverstone.)

horse on me," or something to that effect, and we went out.

Mr. ALLEN.—They seemed to consider it a good joke, is that true?

A. I wouldn't consider it that way.

Mr. SCHLESINGER.—We object to that. [414—363]

The COURT.—Let him state what was said or done.

Mr. ALLEN.—He said the man laughed, or I so understood him, and I was—

The COURT.—Proceed.

Mr. ALLEN.—Then what happened after this conversation down there with Mr. Corder and Mr. Goldberg and yourself, what did you do then?

A. Why, Mr. Corder said it was a horse on him, or something to that effect, and said, "We will go and have a bottle of wine," and we went over to a saloon on Yesler Way, between First and either Post Street or Railroad Avenue, down under where the First National Bank is. I think it was Sutherland's Saloon, and he bought a pint bottle of champagne, and I told him I didn't drink and would take a cigar.

Mr. SCHLESINGER.—You are in the cigar business, are you not? A. I was.

Mr. SCHLESINGER.—I thought so.

Mr. ALLEN.—This episode, then, as concerns Corder, happened how many days, according to your recollection, after the 15th day of April, 1908?

A. I didn't catch that.

(Testimony of E. Silverstone.)

Q. (Question repeated.)

A. Why, I couldn't say. Some short time afterwards.

Q. Was it within a few days, or two or three days?

A. A few days afterwards.

Q. You don't think it was so much as a week, do you? A. I don't think so; no.

Q. After this conversation when did you next hear about your bid with the United States Government for a lot of zinc?

A. I don't think I heard anything more until Mr. Goldberg called me [415—364] up and told me the check was up there for it. That is my next recollection of that transaction.

Q. Told you the check was up there for you?

A. That is what I understood, I believe.

Q. Did you personally get the check, or did Mr. Goldberg get it?

A. My best recollection is that I got it.

Q. Calling your attention to that part of Plaintiff's Exhibit Number "5," that part which purports to be a check dated May 26th, 1908, payable to the order of the Fowler Metal Company, in the sum of \$7,417.09. Did you ever see the original of which that is a photographic copy before, Mr. Silverstone (exhibiting same to witness)? A. I think I did.

Q. I will call your attention to the endorsements on the back of that check. What did you do with the check when you got it?

A. I took it down to Mr. Goldberg, who was waiting for me at, I think, the Butler Hotel; in fact,

(Testimony of E. Silverstone.)

I am sure it was the Butler Hotel; and I handed him the check.

Q. What did he tell you then with reference to it?

A. He asked me if I would exchange checks with him, give him my personal check for this one. I told him I would if he would endorse it, so he endorsed it over to me, "Pay to the order of E. Silverstone," and signed it "Fowler Metal Company." I then endorsed my name on it and took it to the bank to make a deposit, because I couldn't have given him my check unless I had this one in the bank. The receiving teller told me they could not accept the check that way, as the Government required some official to sign. So I took it back to Mr. Goldberg, and he endorsed it. I think it is "Per E. S. Fowler."

Q. Calling your attention to the situation as it arose at that time, did Mr. Goldberg ask you to sign the check in the first [416—365] instance, or did he not? What is the fact?

A. To endorse it, you mean?

Q. Yes.

A. I don't remember whether he did or not.

Q. In other words, as I now understand you, there was then endorsed by Mr. Goldberg, "Pay to the order of E. Silverstone."

Mr. SCHLESINGER.—I think it speaks for itself.

Mr. ALLEN.—Signed "Fowler Metal Company." At that time the "Per E. S. Fowler, President," was not on there, is that true?

(Testimony of E. Silverstone.)

A. No, sir.

Q. And you then took that to your bank. What is your bank?

A. At that time I was banking with the First National Bank.

Q. First National Bank in the city of Seattle?

A. Yes, sir.

Q. Did you make out on that occasion, do you recall, a deposit slip, which included this \$7,417 check?

A. I did, deposited it to my credit, and immediately issued—

Q. Just a moment. I am talking about this first one, Mr. Silverstone.

Mr. ALLEN.—Calling your attention to the time when you first went to the bank, when this endorsement had been made down to signing the name of the Fowler Metal Company. Did you attempt at that time, Mr. Silverstone, to deposit this check to your account?

A. At what time?

Q. At the time when it was first endorsed down to the words “E. S. Fowler,” did you try to deposit it at that time?

A. Before the Fowler—

Q. Yes, sir. A. I did.

Q. Did you make out a deposit slip on that occasion do you recall? [417—366]

A. I must have, because I made out a deposit slip on all deposits.

Q. If the banker's slip shows you had two checks that you deposited there, one for a small amount and the other for this amount, and that was crossed off,

(Testimony of E. Silverstone.)

that would be of the date—approximately what was the day when you first went into the bank?

A. I think June 1st.

Q. June 1st, 1908?

A. The other check was for \$92.20.

Mr. SCHLESINGER.—What is that you have in your hand?

Mr. ALLEN.—He spoke about a deposit slip with two items on.

Q. And you crossed off, then, the big check and deposited the other, is that true as you recall?

A. I guess that is right, or they crossed it out. I don't remember having crossed it out.

Q. What did you next do with this check after you left the bank on this first occasion?

A. I took it to Mr. Goldberg, and he endorsed it "Per E. S. Fowler."

Mr. ALLEN.—Then he made this endorsement of "Per E. S. Fowler"?

Mr. ALLEN.—"President," or something of that sort?

A. Yes, sir.

Q. Did you then take this check back and deposit it in your bank? A. I did.

Q. On what date was it deposited? It shows it was paid on the 2d day of June, 1908. Would that correspond with your recollection of that matter?

A. I think it was June 1st.

Q. Think it was probably June 1st. The bank where it was paid, in the other bank, was June 2d. It may have gone through the next day. What did

(Testimony of E. Silverstone.)

you do with reference to this sum of \$7,417.09?

A. I issued my own personal check to the Great Western Smelting and [418—367] Refining Company.

Mr. ALLEN.—I ask you to identify that instrument (handing paper to witness).

A. That is my check.

Mr. ALLEN.—I ask the clerk to mark it for identification, and move its admission at this time.

The COURT.—It will be received.

Mr. SCHLESINGER.—Object to the introduction of this check as being immaterial, irrelevant, incompetent and too remote in point of time.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

The COURT.—Exception allowed.

(Check referred to received in evidence and marked Plaintiff's Exhibit "36.")

Mr. ALLEN.—That is your signature (showing)?

A. Yes, sir.

Q. Made payable to the Great Western?

A. Yes, sir.

Q. It bears date of June 1st, 1908. That would correspond with your recollection?

A. Yes, that is the date.

Mr. ALLEN.—(Reading same to jury.)

Q. Was that check cashed by Mr. Goldberg, or the Great Western Smelting & Refining Company, in the due course of business, Mr. Silverstone?

A. I presume it was.

Q. Was it charged against your account, if you

(Testimony of E. Silverstone.)

know? A. Charged against my account.

Q. You personally handed this check to Mr. Goldberg, did you? [419—368]

Mr. SCHLESINGER.—Your Honor, that has been testified to at least three times, and I object to a repetition of it.

The COURT.—Oh, he can answer it.

Mr. SCHLESINGER.—Exception.

A. I did.

Mr. ALLEN.—Mr. Goldberg, the defendant here?

A. Yes, sir.

Q. And was this transaction of handing him your check for this sum of \$7,417, did that immediately follow the deposit of the navy pay check in that sum, or soon thereafter?

Mr. SCHLESINGER.—I object on the ground the checks speak for themselves and the transaction speaks for itself; it is calling for his understanding and conclusion.

A. Oh, I think he may answer the question.

Mr. SCHLESINGER.—Exception.

A. My check was given to him before we left the bank.

Q. After you had deposited this check (showing)?

A. After I had deposited the other check, yes.

Q. And that was on June 1st, 1908?

A. June 1st, 1908.

Q. And it was paid out of your account on June 2d?

Mr. SCHLESINGER.—I object, as the facts are before the jury and speak for themselves, calling for his understanding.

(Testimony of E. Silverstone.)

The COURT.—Proceed.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Now, what did Mr. Goldberg say after you handed him this check, or do, in the matter?

Mr. SCHLESINGER.—I object to that on the ground this comes at a time when the transaction is supposed to have been closed, and was closed. Any subsequent acts between these people are absolutely [420—369] immaterial and incompetent and have nothing to do with any of the issues involved in this case.

The COURT.—I understand this inquiry is right at that time?

Mr. ALLEN.—Yes, sir, immediately thereafter.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

The COURT.—Note an exception.

A. I think it was after we got on the sidewalk out from the bank Mr. Goldberg handed me ten or twenty dollars and says, “Go and buy yourself a new hat,” or something to that effect, I just don’t exactly remember the words.

Mr. ALLEN.—Mr. Silverstone, tell the jury, at the time you put in this bid to the United States Government, did you have any official interest of any kind whatsoever in this transaction?

Mr. SCHLESINGER.—I object to that upon the ground it has been asked and answered that he put this bid in at the request of the Fowler Metal Company, which request was conducted through Mr. Goldberg. He never had one dollar’s worth of

(Testimony of E. Silverstone.)

financial interest, and it is not so claimed by anybody.

The COURT.—Let him answer.

Mr. SCHLESINGER.—Exception.

A. I had no interests whatever.

Mr. ALLEN.—You did it merely—

A. As a friendly act.

Q. As a friendly act for Mr. Goldberg?

A. Yes, sir.

Mr. ALLEN.—Take the witness.

On cross-examination the witness testified as follows: My best recollection was that I personally received that check [421—370] for Mr. Kettlewell. I would not care to swear positively.

Q. Did you ever see this paper before (handing paper to witness)? A. I did not.

Q. Never saw it in your life, did you?

A. No, sir.

Mr. SCHLESINGER.—That is all. Gentlemen, I have shown the witness Defendants' Exhibit "G." He has never seen it before in his life.

The COURT.—Don't argue to the jury.

Mr. SCHLESINGER.—Yes, without argument I show it to you. You have seen it all. That is all.

Cross-examination.

(By Mr. VANDERVEER.)

Q. Mr. Silverstone, did you ever enter into any agreement of any kind respecting the bid that you submitted with Mr. Corder?

A. With Mr. Corder or anybody else.

Q. Nor with anyone else? A. No, sir.

Q. When did you first meet Mr. Corder?

(Testimony of E. Silverstone.)

A. When Mr. Goldberg took me over and introduced me.

Q. That was after the contract had been awarded?

A. I believe so.

Mr. VANDERVEER.—That is all.

Mr. MORRIS.—If the Court wishes, I can save a little time by recalling Mr. McNeil.

The COURT.—To cross-examine?

Mr. MORRIS.—Yes, your Honor.

The COURT.—Very well. [422—371]

[**Testimony of A. R. McNeil, for Defendants
(Recalled—Cross-examination).**]

A. R. McNEIL, recalled for further cross-examination on behalf of the defendants, further testified as follows:

I am the same Mr. McNeil who was called, sworn and testified on behalf of the Government in this case the other day. I saw Storekeeper Spear sign certain papers that I presented to his desk. They were letters and bills of lading—principally letters. I cannot say that I ever saw Storekeeper Spear sign a requisition without examining it. It was not my province in business there to see him sign requisitions at all.

On cross-examination the said witness testified as follows:

(By Mr. ALLEN.)

Q. That was Mr. Meyer's business, was it not?

A. Yes, sir.

Mr. SCHLESINGER.—We object.

Mr. ALLEN.—Tell the jury what the custom was

(Testimony of A. R. McNeil.)

in that office with reference to the use of a "Red tag," for any matter that called for Mr. Spear's especial interest for the examination of papers.

Mr. MORRIS.—We object to that.

Mr. KERR.—They speak for themselves; they have Mr. Spear's signature on them.

Mr. ALLEN.—I am asking for the office custom of that office then existing.

Mr. MORRIS.—I object as not proper redirect.

Mr. ALLEN.—I will recall him, then, and make him my witness.

The COURT.—If he knows.

Mr. ALLEN.—What was the custom there as to the use of the red flag, or danger signal? [423—372]

A. For papers?

Q. Yes.

A. That was put on papers as urgent, as an urgent sign.

Q. What meaning did that bear to the mind of Paymaster Spear?

A. Well, they demanded his special attention immediately.

Q. They demanded his special attention?

A. Yes, sir.

Mr. ALLEN.—That is all.

(By Mr. MORRIS.)

Q. Mr. McNeil, the red tags to which you have referred was introduced into the office by the Chief Clerk Mr. Barnes? A. Yes, sir.

Q. And did not exist and was not in operation at the time referred to in the requisition in this par-

(Testimony of W. J. Nagus.)

ticular case, that is, on the first of April, 1908?

A. No, sir.

Q. Mr. Barnes did not come to the Pay Office until the following fall, did he?

A. No, sir, about October.

Q. And those red tags were introduced by Mr. Barnes? A. Yes, sir.

Mr. MORRIS.—That is all, sir.

Q. Mr. McNeil, you have been over there a good many years? A. Yes, about six.

Q. Paymaster Spear is under the impression that was in effect there in the office when he went there in January. Isn't he just as likely to be right about the matter as you are?

Mr. MORRIS.—That is all sir. [424—373]

[Testimony of W. J. Nagus, for Plaintiff.]

W. J. NAGUS, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

My full name is Walter J. Nagus. I live in La Salle, Illinois, and have lived there for forty-six years. I am sales manager for Matheson & Heggler Zinc Company; they are smelters of spelter, rollers of sheet zinc and manufacturers of sulphuric acid. I was in the same position in 1908, and that company was in the same business during that year. I have sold zinc to the Great Western Smelting & Refining Company, shipping to Seattle at different times. The two greatest manufacturing zinc companies of the country are located: Matheson & Heggler Com-

(Testimony of W. J. Nagus.)

pany at La Salle, Illinois Zinc Company at Peru, Illinois.

Q. Those are the two big roller zinc plants in the country. How many zinc plants are there in the country, do you know?

Mr. SCHLESINGER.—Your Honor please, I can't for the life of me see why this is material.

Mr. ALLEN.—This is all preliminary.

Mr. SCHLESINGER.—What difference does it make whether there are twenty, thirty, forty, or only one?

Mr. ALLEN.—You were complaining here the other day we couldn't get the zinc.

The COURT.—Let him answer. Note an exception.

A. Do you mean smelters or producers of sheet zinc and plates?

Q. I mean smelters or producers of sheet zinc and plates.

A. There are two leading industries and two or three small rollers, but they are not—they don't amount to very much. There are only two—

Q. The two big plants are these particular institutions? [425—374] A. Yes, sir.

Q. With which you are connected, with one of them, sales manager? A. Yes, sir.

Q. What is the capacity of your plant with reference to sheet zinc, say, of the size of 6 by 12 by 1½ inch, how many pounds, or thousand pounds, could you produce in a day in that plant?

Mr. SCHLESINGER.—Object to that as imma-

(Testimony of W. J. Nagus.)

terial, irrelevant and not binding upon any one of the defendants here, whether he can produce one pound or one hundred billion pounds.

The COURT.—I don't see that it is material, because before that could become material you would have to show how much was on hand and how much could be consumed. But I don't see it is material.

Mr. ALLEN.—Well, your Honor,—

The COURT.—Well, just go ahead.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

A. Well,—

Q. Approximately.

A. Oh, a hundred tons, perhaps a hundred and fifty.

Mr. ALLEN.—Well, beginning at 1907. What was the condition, coming down through the year 1908?

Mr. SCHLESINGER.—Same objection.

The COURT.—Let him answer.

Mr. SCHLESINGER.—Exception.

A. Comparatively quiet the latter part of 1907, and just normal business in 1908.

Mr. ALLEN.—There was no crowded conditions of the mills on or about the first day of May, 1908, was there? [426—375]

A. I don't think so; no.

Q. Calling your attention to what purports to be a letter of date March 16, 1908, written on the letter-head of the Great Western Smelting & Refining

(Testimony of W. J. Nagus.)

Company, I will ask you to see if you can identify that (handing same to witness). A. Yes, sir.

Q. You have seen that before?

A. These are my notations here (showing).

Q. These are your figures on the margin?

Mr. SCHLESINGER.—Speak louder.

Mr. ALLEN.—Those are his notations on the first page, he said. We ask to have marked for identification Plaintiff's Exhibit "37."

Q. Was that letter received by you in due course through the United States mails to your company?

A. Yes, it was.

Mr. ALLEN.—We offer that, your Honor, in evidence.

Mr. SCHLESINGER.—Let me see it, please (examining same). You offer this in evidence, as I understand it, this letter which is marked March 16th?

Mr. ALLEN.—1908.

Mr. SCHLESINGER.—Only that letter?

Mr. ALLEN.—That is the only part I offer at this time.

Mr. SCHLESINGER.—We have no objection to it.

(Letter referred to received in evidence and marked Plaintiff's Exhibit "37.")

Mr. ALLEN.—(Reading letter to the jury.)

Q. Did you quote the Great Western people a price on that car of zinc?

A. My recollection is that we did, yes. In looking over the [427—376] correspondence, we

(Testimony of W. J. Nagus.)

quoted them a price which we agreed to hold good for thirty days.

Q. I show you what purports to be a copy of a letter, take a look at that, Mr. Nagus, and see if you can—

A. Yes, that is my initial; I dictated the letter.

Q. You dictated that letter?

A. That is a press copy.

Q. That is a press copy of the original letter?

A. Signed by the manager, Mr. Wurz.

Mr. ALLEN.—We offer that in evidence as Plaintiff's Exhibit "38."

Q. Did you afterwards receive an order for that car of zinc? A. Yes, we shipped that on later.

Mr. SCHLESINGER.—It seems to me, your Honor, a carbon copy of an alleged letter sent to the Great Western Smelting & Refining Company, the employer of the defendant, is not admissible, and we object to that upon the ground it purports to be a carbon copy of a letter. There is no evidence that the original was ever mailed, or that the defendant had anything to do with either the writing of the letter or the sending thereof. And upon the further ground it is immaterial, incompetent and irrelevant. As I understand, the carbon copy of a letter cannot be admitted unless you show the original thereof was mailed. I think that is a well-known rule.

Mr. ALLEN.—That is a carbon duplicate, not a copy.

The COURT.—Find out what was done with the original.

(Testimony of W. J. Nagus.)

Mr. ALLEN.—What did you do with the original of this letter?

A. It was mailed.

Q. It was mailed to what place?

A. In the regular order, just as it is there. That is not a carbon copy, that is a press copy, a water copy. [428—377]

Q. And you mailed the original to the Great Western Smelting & Refining Company in Seattle?

A. Yes, in the regular order.

Mr. SCHLESINGER.—You mean your concern did?

A. Yes, in my office.

Mr. ALLEN.—We offer this in evidence.

The COURT.—Admitted.

Mr. SCHLESINGER.—Of course, your Honor please, the main objection to that letter is that the defendant here has no control over fixing prices at which the Western Smelting Company shall either buy or sell, that is our objection, therefore it is not binding upon him.

The COURT.—Note an exception.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "38.")

Mr. ALLEN.—This is a letter of March 21st, 1908 (reading same to jury).

Q. Calling your attention to this telegram, Mr. Nagus, see if you can identify that (handing paper to witness)? A. Yes.

Q. You identify that as coming from the files of your company? A. Yes, sir.

(Testimony of W. J. Nagus.)

Mr. ALLEN.—Offer that for identification, and also in evidence. That is the original that came from the company, is it?

A. That is the telegram, yes, as we received it from the—

Q. From the Postal Telegraph office?

A. From the Postal Telegraph office.

Mr. ALLEN.—Offer that in evidence.

The COURT.—It may be admitted.

(Telegram referred to received in evidence and marked Plaintiff's Exhibit "39.") [429—378]

Mr. ALLEN.—“Postal Telegram received April 13, 1908. Main office of the Matheson & Heggler Zinc Company, La Salle, April 13, 1908. Seattle, Washington, April 11. Matheson & Heggler Zinc Company. Ship quick and trace car 25 tons rolled zinc 1½ by 6 by 12. Signed, Great Western Smelting & Refining Company. Shipped April 16, 1908.”

Mr. SCHLESINGER.—What is the number of that exhibit?

Mr. ALLEN.—That is number 39.

Q. You have been in the zinc business a great many years, have you, Mr. Nagus? A. Yes.

Q. You are accustomed, as a part of your business, to keep in touch with both the wholesale price of zinc as obtained from your and other plants, as well as the price paid and submitted by brokers in various parts of the United States. Do you do that any?

A. No, I can't say that we do that particularly. We know in a general way what the eastern people

(Testimony of W. J. Nagus.)

get, but I couldn't say what they do in some parts of the country.

Q. I understand, but do you know what the current price of zinc was at La Salle, Illinois, in the month of April, 1908?

Mr. SCHLESINGER.—We object to that, your Honor please, as being immaterial, incompetent and irrelevant, in no wise binding upon the defendant, and the question, if at all material as against Mr. Goldberg, should refer to this locality and none other. The witness has very frankly said that he did not know the zinc conditions in Seattle or vicinity at or about 1908.

The COURT.—I think on the evidence, as it is before the Court now, showing that the principal manufacturing concerns of metal of this character being located at the point where this [430—379] testimony seeks to establish the value, and the testimony at this time would indicate that there were no enterprises of that kind on the coast, or any large supply of that character of metal, that this testimony perhaps would be the best evidence that the Court could obtain as to the market values of zinc in quantities of that character; and especially when there is testimony—the Court permitted testimony as to what the reasonable profit would be to the merchant in handling the commodity here. That is before the Court now. And I think I will let him answer the question.

Mr. SCHLESINGER.—Exception.

By Mr. ALLEN.—The Court has ruled this ques-

(Testimony of W. J. Nagus.)

tion is admissible. I will ask the stenographer to repeat it.

Q. (Question repeated.) A. Yes.

Mr. SCHLESINGER.—Exception, your Honor.

Mr. ALLEN.—State, then, for the information of the jury, the price of zinc plate, rolled plate, 12 by 6 inches by $\frac{1}{2}$ inch, on board the cars at or about the first day of April, 1908?

A. \$5.80 a hundred pounds, less 8 per cent discount in carload lots.

Mr. SCHLESINGER.—May it be understood all this goes subject to our objection without our having to repeat it?

The COURT.—Yes.

Mr. ALLEN.—The price, then, that you quoted to Mr. Goldberg, or to his company, and at which you furnished this particular car, was the current price which you would have quoted to any responsible dealer, is that true?

A. Yes, sir.

Q. Do you know the freight rate upon zinc from La Salle, Illinois, [431—380] to Seattle, Mr. Nagus?

A. Yes, sir. Carloads, \$1.25; less carloads, \$1.75.

Q. \$1.25 a hundred, do you mean, Mr. Nagus?

A. Per hundred pounds.

Q. Over what route did this zinc go when it left your plant, do you know? Can you find out from your records?

A. It was Illinois Central, care of the Northern Pacific, is my recollection.

(Testimony of W. J. Nagus.)

Q. Care of the Northern Pacific?

A. I have a record here and the copy of the invoice, if you wish it.

Q. Can you open that record and find the number of that car, Mr. Nagus?

Mr. ALLEN.—You find there any entry of the number of the car, Mr. Nagus?

A. Yes, sir, that is I. C. car.

Q. I. C., meaning Illinois Central?

A. Illinois Central car 39,890, shipped on April 16th.

Q. That went out, then, over the Illinois Central?

A. Care of the Northern Pacific.

Q. Care of the Northern Pacific. That would mean, then, after it left the Illinois Central it would be transferred to the Northern Pacific, is that right?

A. Well, the Illinois Central would take it to Minnesota transfer, yes, sir, and deliver it to the Northern Pacific.

Q. Oh, I see, up near Chicago. I call your attention to Plaintiff's Exhibit Number "29-B," the same being a check of the Great Western Smelting & Refining Company, and paid to J. W. Allen, who was the agent of the Northern Pacific Railroad Company, \$655 for a car of zinc, I. C. 39,890, car number 39,890. Is that the same [432—381] car number and the same description on the car which you just read to the jury?

Mr. SCHLESINGER.—Did you ever have that check?

A. No.

(Testimony of W. J. Nagus.)

Mr. ALLEN.—I know very well he did not.

A. That is the car number.

Q. Illinois Central car number 39,890?

A. Yes, sir.

Q. As it appears on this check stub. Can you take that book, it is plaintiff's exhibit—(handing same to witness)?

A. These two are the one shipment, two invoices of one shipment (showing).

Q. Two invoices of one shipment. What is this book that you just referred to? It says "Zinc files" on the back?

A. That is a copy of every invoice that was made during that period.

Q. During that period to different firms?

A. To different firms, yes, sir.

Q. It is labeled on the back "Zinc files."

A. They are kept in regular order.

Mr. ALLEN.—We offer in evidence page 306 of this book, identified by the witness as zinc files, the same showing the bill to the Great Western Smelting & Refining Company of Seattle, Washington, for I. C. car number 39,890, showing 24,979 pounds of zinc; also page 305 in the same book.

Mr. KERR.—Object to it on the ground it is incompetent; object to the testimony.

Mr. ALLEN.—This is a duplicate of the original bill, is it not?

A. Yes, sir.

Mr. KERR.—Wait a moment. [433—382]

Mr. KERR.—There is an objection pending here.

(Testimony of W. J. Nagus.)

The COURT.—The objection to this, I think, is good in the present condition of the record.

Mr. ALLEN.—Well, your Honor, this is a duplicate of the bill sent out.

The COURT.—That isn't the testimony.

Mr. ALLEN.—I was just asking him that.

Q. As a matter of fact, this is a duplicate of the bill sent out? A. Yes, a press copy.

Mr. KERR.—You mean it is a letter-press copy?

A. It is a letter-press copy.

Mr KERR.—I renew my objection as incompetent.

The COURT.—It may go in.

(Pages 305 and 306 of the book referred to received in evidence and marked Plaintiff's Exhibit "40.")

Mr. ALLEN.—The first page, for 25,035 pounds of zinc plate, size $\frac{1}{2}$ by 6 by 12 inches; and the second page being of the same size zinc, 24,979 pounds. That is Plaintiff's Exhibit Number "40."

Q. How did you collect your money from the Great Western people for this car of zinc?

Mr. KERR.—Object to that as immaterial. What difference does it make?

The COURT.—He may answer.

Mr. KERR.—Exception.

Mr. ALLEN.—Do you recall? Can you find out from your record?

A. We drew on them at sight.

(Testimony of W. J. Nagus.)

Q. Does your record show the amount of the sight draft you drew?

A. Our ledger does, yes, sir. [434—383]

Q. Will you kindly take a look at your ledger?

A. These are the two invoices where they were copied.

Mr. ALLEN.—You identify this large book as the ledger of the Matheson & Heggler people, kept in their plant during 1908?

A. December, 1907, to December, 1908.

Q. Then would it include any entries of your office on the month of April, March, April or May, 1908?

A. All of the entries.

Q. You have opened this ledger at page 564 and indicated the third line thereof as being the entry of something indicated as "By at sight." What do you mean by that?

A. Well, when we made the shipment we drew on these people and gave them credit, and our bank gives us credit when we send them the draft.

Q. That, in other words, is the entry of the sight draft drawn by you against the Great Western Smelting & Refining Company?

A. Yes, we give them credit immediately that we drew on them.

Mr. ALLEN.—We offer in evidence that particular entry in this ledger, your Honor.

Mr. KERR.—Is that this gentleman's company's ledger?

Mr. ALLEN.—Yes, sir, it has been so identified.

The COURT.—That is identified as exhibit "41."

(Testimony of W. J. Nagus.)

Mr. ALLEN.—“41,” yes, sir. Page 564, the third entry from the top of the page. That, gentleman, reads as follows: I won’t pass this heavy book around.

Mr. SCHLESINGER.—Your Honor please, we object to the introduction of that ledger, or any part thereof, in evidence on the ground it is in no wise binding upon this defendant. If we can be held responsible for entries made in books in Illinois without our consent it is announcing a new rule of law unheard of. [435—384]

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

(Page 564 referred to, received in evidence and marked Plaintiff’s Exhibit “41.”)

Mr. ALLEN.—The third entry reads as follows: “April 16th”—the date of the book, as just testified, is 1908,—“By at sight, \$2,668.75, April 16th.”

Q. I call your attention to a memorandum that I hold in my hand, and see if you can identify that (showing same to witness)? A. Yes.

Q. What is that?

A. That is our notice of sight draft. That is billed with the invoice to the consignee, notifying them—

Q. That is a press copy, is it, of the original?

A. This is a letter copy of it, yes, sir, the same as of the invoice.

Mr. ALLEN.—We ask that be marked and offered in evidence, your Honor.

The COURT.—Exhibit “42.”

(Testimony of W. J. Nagus.)

Mr. ALLEN.—This is a bill—

Mr. SCHLESINGER.—Do I understand you offer the page of the Corder Company as well, or just the Great Western Smelting & Refining Company?

Mr. ALLEN.—The Great Western, that is all.

Mr. SCHLESINGER.—There are two pages.

(Pages referred to received in evidence and marked Plaintiff's Exhibit "42.")

Mr. ALLEN.—This page is all I wanted (showing.) This is, gentlemen, as follows: "Please address communications to the [436—385] company. April 16th, 1908. Great Western Smelting & Refining Company, Seattle, Washington. Matheson & Heggler Zinc Company, smelters of zinc and sulphuric acid, La Salle, Illinois. Dear Sirs: Addressed to the Great Western. Enclosed please find invoice amounting \$1,335.87, \$1,333.89, total of \$2,669.76, for which we drew at sight, order of the First National Bank, Chicago, with railroad freight receipt attached. Yours very truly, Matheson & Heggler Zinc Company."

Q. Going back to this, Mr. Nagus, you have for years kept in touch with the brokers who have hauled zinc from yourself and other plants, have you not? A. Yes, sir.

Q. And the price which they obtained from the United States Government, and other people, for the sale of zinc plate. State to the jury what was a fair and reasonable profit paid and allowed to brokers selling plate 6 by 12 by $\frac{1}{2}$ inch to the United States Government with the range of your long experience

(Testimony of W. J. Nagus.)

at or about the month of April, 1908?

Mr. KERR.—We object to that, your Honor, on the ground it is incompetent and irrelevant, and he is not qualified.

The COURT.—I think he has shown qualifications. He may answer. This is a commission paid to brokers for selling the goods?

Mr. SCHLESINGER.—Commission paid to brokers, no time mentioned, no place mentioned, and we are not brokers. How can that be binding upon us, and no locality mentioned?

Mr. ALLEN.—I said brokers and others, your Honor.

The COURT.—It might effect some of the defendants.

Mr. SCHLESINGER.—We take an exception, your Honor.

The COURT.—Noted.

Mr. ALLEN.—Add “Any other brokers and others.” [437—386]

Mr. SCHLESINGER.—That addition makes it very indefinite. We renew our objection, that the words “and others” does not mean anything.

The COURT.—I think that makes it objectionable.

Mr. ALLEN.—Well, eliminate that.

Mr. SCHLESINGER.—We would like to have the name, India, Hindustan, or South Africa, some country, to have it part way definite.

The COURT.—Fix some place.

Mr. ALLEN.—In the zinc markets of the United

(Testimony of W. J. Nagus.)

States, confining yourself to that territory.

Mr. SCHLESINGER.—Same objection.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)—during the period on or about April 1st, 1908.

Mr. KERR.—We object as immaterial, incompetent and irrelevant, and that it is not shown this concern sold any zinc.

The COURT.—Note an exception.

A. The business of rolled zinc plates sold to the Government is handled usually on a contract basis—

Mr. SCHLESINGER.—We move to strike out that answer.

Mr. KERR.—Move to strike it as incompetent, irrelevant and immaterial.

The COURT.—The answer is stricken. The jury is instructed not to consider it at this time.

Mr. ALLEN.—Eliminate the explanation about how it is usually handled. Tell the profit.

Mr. ALLEN.—Read him the question again. (Question repeated.) I will frame it again.

Q. Mr. Nagus, from your long experience as a manufacturer of rolled zinc plate, and from your connection with the manufacturing end [438—387] of the business, did you have an opportunity to know and observe the profits made by brokers and by merchants who handled plate of that character?

A. Only on Government contracts.

Mr. SCHLESINGER.—Now, your Honor please, we move to strike that out. How does this man know the overhead expense of any particular mer-

(Testimony of W. J. Nagus.)

chant, how does he know it?

Q. (Question repeated.)

Mr. KERR.—Answer yes or no.

A. Not generally, no, I do not.

Mr. KERR.—I object to that on the ground it is incompetent, irrelevant and immaterial, what they consider. Who are “they”?

The COURT.—I think the objection must be sustained for the reason that it is apparent, under the conditions here, that the rule sought to be invoked here would not be fair, nor the one that would be applied.

Mr. ALLEN.—This witness has covered a period of many, many years in the manufacturing of zinc plate, and—

Mr. KERR.—If counsel has any questions to ask I submit counsel ask them, and not—

The COURT.—I have granted him permission to.

Mr. KERR.—I object to his arguing to the Court the qualification of this witness, or making any such statements before this jury.

Mr. ALLEN.—Mr. Kerr can’t do all the talking in this court.

Mr. KERR.—And it is improper.

Mr. ALLEN.—In that business, as he has testified, of which there is only a few of these in the United States, the two biggest ones, your Honor has heard the testimony, are in Illinois. They sell to brokers and merchants throughout the country. The United States Government, in its purchase of zinc, it does it [439—388] in nearly all cases by advertise-

(Testimony of W. J. Nagus.)

ment. They keep in touch with all the local trade all over the country who handle their particular commodity. I will tell your Honor, if you want me to go more fully into that, they always keep in touch with the prices obtained in the awards to the Government. He knows more about that particular part of it than the astute Mr. Goldberg, who sits here in the courtroom.

Mr. SCHLESINGER.—Your Honor, that is an improper statement, and he ought to withdraw it and apologize.

The COURT.—Yes, that is improper.

The COURT.—Yes, I think that should be stricken as to the defendants in the case.

Mr. ALLEN.—Does your Honor draw this distinction, then? You were going to permit me to ask the general question, and then when he was going to confine it to the Government sales, does your Honor hold that disqualifies him to advise the jury as to this particular kind of transaction?

On cross-examination said witness testified as follows:

Cross-examination.

By Mr. SCHLESINGER.—I don't think, after the cross-examination, he will pursue the inquiry.

Q. Mr. Nagus, I will show you a letter dated La Salle, Illinois, February 8th, 1908 (handing same to witness). Is that the letterhead of Matheson & Heggler Zinc Company? A. Yes, sir.

Q. Do you recognize the signature at the bottom of that letter? A. Yes.

(Testimony of W. J. Nagus.)

Q. Whose signature is it?

A. That was our manager at that time. [440—
389]

Q. Your manager at that time?

A. That is my initial (showing).

Q. You dictated this letter? A. Yes, sir.

Q. And you are familiar with its contents?

A. I will have to read the letter to familiarize myself.

Mr. ALLEN.—Read it to yourself?

A. Yes, sir.

Mr. SCHLESINGER.—Does it speak the truth as you then conceived it to be, Mr. Nagus?

A. Yes, that letter is all right; that is what—

Q. Well, yes, you said that.

Mr. ALLEN.—May I see it?

Mr. SCHLESINGER.—Just a minute.

Q. I will call your attention also to a printed slip in the upper left-hand corner of that letter (showing).

A. Yes.

Q. Was that printed slip attached to that letter when you mailed it? A. I think so.

Q. Look at it and see.

A. It was customary to do that.

Q. It was customary?

A. Yes, it was customary.

Mr. SCHLESINGER.—Now, gentlemen, we will take pleasure in showing you the letter (handing same to attorneys for plaintiff).

(Paper referred to received in evidence and

(Testimony of W. J. Nagus.)

marked Defendants' Exhibit "H.")

Mr. SCHLESINGER.—“La Salle, February 8th, 1908. Great Western Smelting & Refining Company, 1924 Ninth Avenue, Seattle, Washington. Important. We beg to state that while we furnish [441—390] large quantities of sheet zinc, rolled zinc plate and spelter for the use of the Government, which have given the best of satisfaction, we have, on account of the exacting specifications, always declined to quote direct and must leave it to our customers to take the responsibility of goods being satisfactory to the Government. Matheson & Hegler Zinc Company.” Then follows this letter:

“Great Western Smelting & Refining Company. Gentlemen: We are to-day in receipt of inquiry from the United States Navy Department of your city requesting price on half, three-quarters and one inch rolled zinc plate 24 by 36, but, as you understand, it is not customary to quote *an* Government inquiries direct. We therefore wired referring them to you, and also telegraphed you accordingly as per enclosed copy. Our price today on the above plate, packed in 500 pound boxes, is \$600 per one hundred pounds. Freight on board La Salle, less five per cent f.o.b., less five per cent quantity discount on carload lots and three per cent for sight draft with B/L attached. The freight rate to your city in carload lots, 40,000, is \$1.25 per hundred pounds. We hope to be favored with your order and could make prompt shipment.”

Q. I will ask you this one question: In selling this zinc you didn't credit the Government, you credited

(Testimony of W. J. Nagus.)

the Great Western Smelting & Refining Company, did you not, or rather charged them with the account?

A. We had nothing to do with the Government.

Q. You had no dealings with the Government at all of any kind, nature or character with respect to this transaction?

A. We had no direct dealings with the Government; no, sir.

Q. You looked to the Great Western Smelting Company for your money?

A. Yes, sir. [442—391]

Q. And you have no arrangement with the Great Western Smelting Company as to what they should charge for their goods? A. Absolutely none.

Q. I will show you—shall I have it marked first?

The COURT.—Yes, Defendants' Exhibit "I."

Mr. ALLEN.—Just for identification?

Mr. SCHLESINGER.—Yes.

The COURT.—"I" is a telegram, is it?

Mr. ALLEN.—"I" is a telegram, yes, sir.

Mr. SCHLESINGER.—And if the Great Western Smelting Company had any disputes with the Government concerning this zinc that was a matter between the Great Western Smelting Company and the Government, and none of your concern?

A. Yes.

Q. I will show you a telegram dated February 8th, 1908, and ask you whether that was sent out by your concern in the due course of business (exhibiting same to witness)?

(Testimony of W. J. Nagus.)

A. I think it was. I would like to look up our files to answer that, but I believe that I sent that, although I would like, before stating absolutely, I would like to look at our correspondence.

Q. Certainly.

Mr. ALLEN.—Maybe I will admit it.

Mr. SCHLESINGER.—Have you the correspondence here?

Mr. ALLEN.—No, sir.

Mr. SCHLESINGER.—Well, we can't defer the trial for you to go back to Illinois.

Mr. ALLEN.—We will admit that.

Mr. SCHLESINGER.—To your best recollection—

A. Yes, sir, my recollection is that I sent that.

[443—392]

The COURT.—All right, admitted.

Mr. ALLEN.—Here is the original, as a matter of fact.

Mr. SCHLESINGER.—From our files, yes.

(Telegram referred to received in evidence and marked Defendants' Exhibit "I.")

Mr. SCHLESINGER.—“Great Western Smelting & Refining Company, 1924 Ninth Avenue, Seattle, Washington. Have inquiry from navy yard for plate half and one inch. Our price to you \$6 La Salle, usual discount, prompt shipment. Please quote Matheson & Heggler Zinc Company.”

A JUROR.—Do we understand this to be five per cent and three per cent cash?

(Testimony of W. J. Nagus.)

Mr. SCHLESINGER.—What is the fact about that?

A. Five per cent is a quantity discount in carload lots.

Q. F.o.b. La Salle five per cent discount in carload lots and three per cent for sight draft?

A. The price was subject to straight eight per cent discount.

Q. Well, that is what that invoice says. Then you make it five and three and call it eight?

A. Call it eight, yes.

Q. The five per cent is on account of the quantity?

A. Yes, sir.

Q. The three per cent is whether the quantity is large or small? A. Yes, regardless.

Q. I will now show you a letter, and have it marked, your Honor.

(Paper referred to marked Defendant's Exhibit "J" for identification.)

Q. I will now show you a letter dated March 16th, 1908, addressed to the Great Western Smelting & Refining Company, and signed by [444—393] your general manager. Was that letter sent out in due course of mail? A. Yes, sir.

Mr. ALLEN.—This has reference to that requisition for pig plate?

Mr. SCHLESINGER.—Yes. Omitting the caption, gentlemen: "Great Western Smelting & Refining Company, Seattle, Washington, March 16th, 1908. Your telegram of today's date is received specifying for 20,000 of rolled zinc plates, as fol-

(Testimony of W. J. Nagus.)

lows.” Then comes the specification of the plates.

Mr. ALLEN.—Well, give then the specification of the plates.

Mr. SCHLESINGER.—“5,000 pounds $\frac{1}{2}$ by 24 by 28 inches; 5,000 pounds $\frac{1}{2}$ by 24 by 26 inches; 5,000 one inch by 24 by 36 inches; 4,000 one inch by 24, by 48 inches. Referring to the last item will say that the largest we can furnish of one inch plate is 24 by 36, and we therefore telegraphed you accordingly, as per enclosed press copy, at the same time quoting you \$5.08 La Salle for the additional carload, less the usual discount. and your mention that we intend to allow this price to apply on present carload orders. We would add that in quoting prices on rolled zinc plates the same are always for prompt acceptance, excepting when same is contingent upon the awarding of contracts by the Government, and while we are able to give you a reduction in price on the present order, at times market may advance where the order is not placed promptly, owing to fluctuations in the spelter price. We await your reply with reference to one inch plates, and hope to be favored with your order for additional carloads.”

Q. What do you mean by the phrase here “owing to fluctuations in the spelter price”? What is spelter? A. Spelter is big zinc. [445—394]

Q. Spelter is pig zinc. Do you manufacture pig zinc? A. We do, yes.

Q. And the price of spelter, which was the basic material, those prices fluctuated from time to time?

A. Yes, sir.

(Testimony of W. J. Nagus.)

A JUROR.—There is no difference between half inch, and one inch, or two inches, it is all the same price?

A. The limit is one inch. We couldn't roll any—

Q. Well,—

A. There is no difference for one half or one inch. (Paper referred to received in evidence and marked Defendants' Exhibit "J.")

Mr. SCHLESINGER.—I will show you a letter dated July 29th, 1908, marked Plaintiff's Exhibit "K" for identification. While we are having this marked, let me ask you this question: You were asked to bring with you from Illinois certain documents, were you not?

A. I don't exactly remember the phraseology of the subpoena, but—yes, to bring records in reference to the price at a certain time.

Q. Did you bring with you any of your letter-press copies of these letters?

A. They were in the hands of the Government.

Q. Did you bring with you any letter-press copies of these letters that I have read?

A. They are in the hands of the United States Government.

Q. Are they in this courtroom?

A. I haven't got them.

Q. How long has the Government had them, to your knowledge, letter-press [446—395] copies of these letters just given to this jury, how long has the Government had them?

A. Well, I can't answer that exactly. Some time.

(Testimony of W. J. Nagus.)

Some one came to our office sometime ago and got them; I couldn't give you the date.

Q. Were they given to the Government officials at the same time that you gave them these other ones introduced by the Government?

A. Everything they have got was given to them at one time, yes.

Q. You don't remember the name of the particular Government official that you handed them to, do you?

A. Why, I think I have a notation some place.

Q. Well, it is not important just now; simply want the fact. A. I didn't know the party.

Q. I will ask you to look at this letter dated July 29th.

The COURT.—That exhibit "J"?

Mr. SCHLESINGER.—Which is exhibit "K," your Honor, it is marked here (handing same to witness).

A. This is a letter from our office, although I didn't write this, my assistant wrote this.

Q. Is it your impression that letter was mailed in due course of business? A. Yes.

Mr. ALLEN.—Well, I don't know the possible connection that has with this matter. That is way along in July. If you explain to me what is about—

Mr. SCHLESINGER.—Well, I simply want to show, your Honor please, perhaps I can cover it all by one question, because I have a mass of correspondence here from them.

Q. Is it not a fact that the Great Western Smelting Company ordered from your concern, within a

(Testimony of W. J. Nagus.)

period of about two years preceding [447—396] May, 1908, exclusive of this present car, between four and six carloads of rolled zinc plate?

Mr. ALLEN.—Covering what period of time?

Mr. SCHLESINGER.—Two years.

A. I couldn't answer that.

Q. You can't, but you know very large quantities—

A. Yes, they bought from us considerable, but I don't recollect the carloads.

Q. Bought in carloads, half carloads and whole carloads. Now, I show you this letter dated October the 8th, 1907, and this will be the last that I will probably introduce on that subject.

(Paper referred to marked Plaintiff's Exhibit "I" for identification.)

Q. I will ask you to please look at that letter, Mr. Nagus, and state whether it was sent out from your concern in due course of business. A. Yes.

Q. And does that letter speak the truth as it then existed, to your knowledge?

A. Yes. It speaks the truth to my knowledge.

Mr. ALLEN.—I don't know *what is* for.

The COURT.—Let it go in.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "L.")

Mr. SCHLESINGER.—(Reading letter to jury.)

Mr. ALLEN.—That is along in October, 1907?

Mr. SCHLESINGER.—Yes, sir.

Q. You are manufacturers, are you not, of sheet zinc, sulphuric acid and smelters of spelter?

(Testimony of W. J. Nagus.)

A. Yes.

Q. You have no place of business in Seattle, have you? [448—397] A. No.

Q. Or anywhere on the Pacific Coast? A. No.

Q. You have this one factory? A. That is all.

Q. At La Salle, Illinois? A. Yes, sir.

Q. And you sell to the trade generally, do you not?

A. Yes, sir, to anyone that wishes to buy.

Q. By the way, are you a part of a combine or trust? A. No, sir; absolutely independent.

Q. I never heard anyone admit that even if it were so. I don't think that you are.

The COURT.—Proceed.

Mr. SCHLESINGER.—But what your particular profits are is a matter that concerns you, does it not, your particular profit in the matter of manufacture?

A. Yes, sir, I think so, that is right.

Q. Now, as a matter of fact, I am not going to go into this question of your profits because it would take too much time; it might be a Government inquiry, or something of that sort.

Mr. SCHLESINGER.—As a matter of fact, in selling to the Great Western Smelting Company at various times, did not your price, as shown by these letters, fluctuate?

A. Yes.

Q. From between six to \$7.40 per hundred pounds?

A. Yes, that is right.

Q. And, for all that you know, they might still fluctuate and become higher in the future, dependent upon trade conditions?

(Testimony of W. J. Nagus.)

Mr. SCHLESINGER.—So far as you know, without being able to dip [449—398] into the future, because you have no prophetic vision, they might still further fluctuate and become higher or lower as conditions warrant? A. Yes, sir.

Q. You are not able to say now, are you, with any degree of definiteness, what you will sell these plates for three months hence? A. No.

Q. In other words, as a man of common sense, you know that any business man might expect fluctuations in prices for merchandise? A. Yes.

Q. If there is an over-demand and a small supply prices raise, do they not? A. Yes.

Q. If there is a large supply and a small demand prices lower, do they not?

A. Generally speaking, yes.

Q. And isn't it just so, for instance, with the conditions of labor? A man is worth according to his particular efficiency, his salary perhaps being raised in accordance with his administrative efficiency, isn't that true? A. Yes, I—

Q. No doubt about that. I think that is all.

On redirect examination the said witness testified as follows:

(By Mr. ALLEN.)

Q. Mr. Nagus, if, on April 1st, or thereabouts, the Whiton Hardware Company of this city, a firm with an established credit, wealthy [450—399] concern, had asked you for a price on zinc of this particular kind you would have been willing and able

(Testimony of W. J. Nagus.)

to have sold to them, would you not?

A. We would.

Mr. ALLEN.—If the Seattle Hardware Company, one of the wealthy concerns of this city, had asked you for a price on zinc plate at or about April 1st, 1908, would you have been able to quote and deliver to them a car of zinc plate at the same figure as to Goldberg? A. Yes.

Q. In other words, Mr. Goldberg didn't have any exclusive monopoly in zinc plate in this northwestern country, did he? A. No.

Mr. ALLEN.—Calling your attention to a letter dated March 6, 1908, I will ask you if you can identify that letter (handing paper to witness).

A. Yes, we received that letter.

Mr. ALLEN.—This we ask the clerk to identify. I am going to offer it in evidence.

(Paper referred to marked Plaintiff's Exhibit "43" for identification.)

The COURT.—What date is that?

Mr. ALLEN.—March 6th, 1908. We now offer this in evidence, your Honor. It might properly have been part of the direct. There has been matters gone over in cross-examination. While they are examining this particular exhibit,—

Q. Now, tell the jury just exactly as regards your relation to the United States Government in the matter of bids and your relation to the different brokers and dealers over the country who from time to time handle your products. [451—400]

Mr. SCHLESINGER.—Well, now, if your Honor

(Testimony of W. J. Nagus.)

please, that is a double-barrelled question, and even if you separate it, it seems to me it is incompetent, irrelevant and immaterial and not binding—that question is absolutely immaterial, incompetent and not binding upon any one of the defendants, as to what their relations were with the Government. The Government has a right, as has been shown here, to buy direct from them, as it had bought from one of this concern's competitors at a previous time, but why they didn't sell is shown by the printed document.

The COURT.—He may answer the question.

Mr. SCHLESINGER.—Take an exception.

The COURT.—Noted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "43.")

Mr. ALLEN.—What was the rule, and what was the reason for it, that is the primary purpose of the question, what was the business rule of your particular establishment?

Mr. KERR.—That is not binding on the defendants.

Mr. ALLEN.—You offered evidence on that particular point.

Mr. KERR.—Oh, we haven't offered any evidence,—

The COURT.—Proceed.

Mr. KERR.—Exception.

A. Our position was strictly independent with all dealers. We left the matter in the hands of the dealers. That had been the policy of the company.

(Testimony of W. J. Nagus.)

Mr. ALLEN.—And you followed that policy when the Government made inquiries, you left it to the dealer?

A. Yes, we left it to the dealer, as we did in that case that come to us direct.

Mr. KERR.—I object to that as leading. What is the use of counsel [452—401] standing up here and testifying to the witness.

The COURT.—He has answered it.

Mr. ALLEN.—They put in three or four letters here—

The COURT.—Well, ask him about it.

Mr. ALLEN.—Mr. Nagus, they have here offered in evidence, or calling your attention to certain letters bearing upon the question that the Government had asked you with reference to the price on certain zinc plate. Did you in this instance follow the usual and customary rule of your office? A. Yes.

Mr. ALLEN.—This has been offered in evidence, gentlemen, and I will read it to you.

Mr. SCHLESINGER.—No objection.

Mr. ALLEN.—This is a letter of the Great Western Smelting & Refining Company of San Francisco. 1924 Ninth Avenue South, Seattle. March 6th, 1908. Addressed to Matheson & Heggler Zinc Company, La Salle, Illinois (reading same to jury).

Q. Did you receive, Mr. Nagus, on or about April 1st, 1908, did your office receive any inquiry from the navy yard office at Bremerton, or the Navy Pay Office in the city of Seattle, asking you to quote them any price on zinc plate at that time?

(Testimony of W. J. Nagus.)

Mr. SCHLESINGER.—I object to that upon the ground that his records are the best evidence.

The COURT.—He may answer if he knows.

Mr. SCHLESINGER.—If you know of your own knowledge.

A. We received one inquiry. I couldn't give you the date without looking up the correspondence.

Mr. ALLEN.—That is all. [453—402]

On recross-examination said witness testified as follows:

(By Mr. SCHLESINGER.)

Q. Mr. Nagus, I will call your attention to a bill sent out by your firm to the Great Western Smelting & Refining Company in August of 1907 for 40,000 pounds of zinc plates at \$8. Is that the fact (exhibiting papers to witness)?

A. That is our invoice, yes.

Mr. SCHLESINGER.—We offer this in evidence.

The COURT.—Admitted.

(Paper referred to receive in evidence and marked Defendants' Exhibit "M.")

Mr. ALLEN.—Are you going to read that? Is that offered in evidence?

Mr. SCHLESINGER.—It is marked and offered in evidence.

The COURT.—Any objection?

Mr. ALLEN.—I did object to it, your Honor. I want to renew my objection it is entirely too far back. Of course, he has made a speech, but the jury and I would rather it would go in. I withdraw my objection.

(Testimony of W. J. Nagus.)

The COURT.—Very well.

Mr. SCHLESINGER.—I have no further questions.

(By Mr. KERR.)

Q. Did it cost your firm any more to manufacture these zinc plates in August, 1907, than it did in the month of April, 1907?

A. Do you mean the question of labor or the question of—

Q. I mean the actual cost of producing this zinc plate? A. Yes.

Q. What did the increased cost amount to, if any?

Mr. ALLEN.—I object as incompetent, immaterial and improper cross-examination. [445—403]

The COURT.—Objection sustained.

Mr. KERR.—Note an exception. That is all.

(By Mr. MORRIS.)

Q. Mr. Nagus, suppose that the Matheson & Hegler Zinc Company of La Salle, Illinois, had received an award from the Purchasing Paymaster of the Government at Seattle for a carload of zinc, or 50,000 pounds of zinc, and the time of delivery had been fixed at fifteen days after the date of the award, could your company have delivered to the Puget Sound Navy Yard at Bremerton said zinc within the period of fifteen days?

A. Well, that is hard to answer. I couldn't answer that question definitely. That would require an explanation.

Q. Sir?

A. That would require an explanation. I couldn't

(Testimony of W. J. Nagus.)

answer it definitely. That is possible, but I don't know whether—

Q. Is it not probable? A. Hardly.

Q. Do you know?

A. We could furnish the material within three days, but I am not sure that you could get it here in the remaining twelve. It is possible. I believe we had a car in eleven days once.

Q. You had a car from La Salle to Seattle in eleven days? A. That is my recollection.

Q. Yes, sir. Then if you had this zinc on hand in your factory, and you were required to deliver that from the factory to the navy yard at Bremerton within the period of fifteen days from receiving notice of your award, it is very probable that you would have been able to have made the delivery, if you had at other times made it in eleven? [455—404] A. We wouldn't agree to do it; no, sir.

Q. Sir?

A. We would not have agreed to do it.

Q. I am not asking you what you would agree.

A. I wouldn't agree to do it, no, sir.

Mr. MORRIS.—Why not?

A. The time is too short.

Q. Why?

A. Why, we would be afraid to agree to it.

Q. Well, what is the reason, why?

A. Because, on an average, it would require more time.

Q. How much more?

A. Generally speaking, about three weeks.

(Testimony of W. J. Nagus.)

Q. How much?

A. Three, possibly four. Three weeks would be a minimum that we would expect, perhaps four.

Q. How did you happen to deliver the other carload in eleven days?

A. Well, that was up to the railroad company, you understand. I said it was delivered in eleven days. My recollection is that the car got through one time—that we had a report it went through in eleven days. We didn't do that; the railroad company did that.

Q. The railroad company? A. Yes.

Q. Well, you would deliver this zinc by the railroad company in any event, would you not?

A. Yes.

Q. I am speaking about the railroad company delivering it from La Salle. If it was sent through it would be delivered within fifteen days, could it not?

A. That is possible.

Q. Sir? [456—405] A. That is possible.

Q. And you did make a delivery within eleven days by rail?

A. Well, that was the returns that we got, you know. I don't know of my own personal knowledge.

Q. You got returns it was delivered within eleven days? A. No.

Q. You are not questioning that return, are you?

A. No, I am not questioning it. I didn't pay any further attention to it.

Mr. MORRIS.—That is all.

By Mr. SCHLESINGER.—You want to save time

(Testimony of W. J. Nagus.)

and consent to this being put in evidence here (showing)?

Mr. ALLEN.—These are 1910, your Honor. No, I don't want to consent to those.

Mr. SCHLESINGER.—Very well.

(By Mr. ALLEN.)

Q. Mr. Nagus, if there were submitted to you a proposition of delivery to the navy yard in the city of Bremerton, a carload of zinc, the same to be delivered within five days after the award was made to you, and there was no carload of zinc of that character on the Pacific Coast, and the nearest is in Illinois, from your experience with shipping material do you think it would be possible for you to deliver that within five days from a point in Illinois?

A. No.

Q. Not unless you had the use of an aeroplane, or something of that sort?

A. Impossible from my experience. [457—406]

Mr. ALLEN.—That is all.

Mr. ALLEN.—May we take a notation from this ledger and let him take it?

Mr. SCHLESINGER.—Yes, let Mr. Nagus, because he is familiar with it. It is subject to our objection, your Honor, heretofore made.

Mr. ALLEN.—Will you copy that page for us, Mr. Nagus?

Mr. NAGUS.—You want the account? This is the debit and this is the credit here (showing). This is a folio, not a page.

Mr. ALLEN.—This part here offered in evidence

(Testimony of C. H. Howell.)

(showing.) We want both pages offered in evidence in the same way.

Mr. SCHLESINGER.—Anything that you want.
[458—407]

[Testimony of C. H. Howell, for Plaintiff.]

C. H. HOWELL, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

My full name is Charles H. Howell. I am Assistant Cashier in the First National Bank in the city of Seattle; held that position a little over a year. In the year 1908 I was with the same bank in the capacity of receiving teller, and was such teller in April, 1908. I knew then a customer of the bank, Mr. Silverstone. He kept an account with said bank in the month of April, 1908.

Q. Referring to the records of your institution, checks and deposit slips, and the like, I will ask you whether or not he came to your bank on or about the first day of June, 1908, and made a deposit on that day, is that a fact? A. Yes, sir.

Q. I call your attention to this memorandum (showing same to witness). Can you identify that as a memorandum kept in your institution?

A. Yes, sir.

Q. What is that; state to the jury.

A. Deposit ticket, E. Silverstone, credit.

(Paper referred to marked Plaintiff's Exhibit "44" for identification.)

Q. Is that in the condition in which it was pre-

(Testimony of C. H. Howell.)

sented there at the window? A. No.

Q. In what way was it presented, if you recall?

A. Well, it was presented originally with two checks, and I marked one off.

Mr. ALLEN.—We offer this at this time in evidence. [459—408]

Mr. SCHLESINGER.—We object to this on the ground it is incompetent, irrelevant, immaterial and not binding upon the defendants, and too remote in point of time.

The COURT.—That the deposit slip of the first of June.

Mr. ALLEN.—Objection overruled.

Mr. SCHLESINGER.—Note an exception.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "44.")

Mr. ALLEN.—This part of the slip which has a pencil drawn through both the second item and the balance originally, as I believe you stated, there was a second check presented by him, and that was crossed off by yourself? A. Yes, sir.

Q. State to the jury just what conversation occurred between yourself and Mr. Silverstone at that time with reference to this matter. Just a moment until I get you the check.

Mr. SCHLESINGER.—We object to that upon the ground this calls for subsequent conversations, conversations occurring after the termination of the alleged conspiracy, and therefore in no wise binding upon any one of the defendants.

The COURT.—This is at the time of the deposit?

(Testimony of C. H. Howell.)

Mr. ALLEN.—Yes, sir.

The COURT.—Overruled.

Mr. SCHLESINGER.—After the 26th of May.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

The COURT.—Noted.

Mr. ALLEN.—I call your attention to the check, which is a part of Plaintiff's Exhibit Number "5," being a check signed by Robert [460—409] H. Orr, and payable to the Fowler Metal Company, or order. Calling your attention particularly to the endorsement on the back, can you recall what conversation took place, or the substance?

A. I can't recall it, no.

Mr. SCHLESINGER.—The same objection, your Honor please, to all this line of testimony.

The COURT.—Same ruling and exception.

Mr. ALLEN.—Do you recall as to the fact that there was some disagreement with reference to the endorsement at that time between you?

Mr. SCHLESINGER.—Exception.

A. I can't recall definitely on that question, no.

Mr. ALLEN.—You can't recall definitely?

A. No.

Q. But there was some conversation at that time between yourself and Mr. Silverstone?

A. Yes. The check was given back to Silverstone by me for some reason, and my impressions is it was on account of there was no official endorsement on the back of the item. I can't—

(Testimony of C. H. Howell.)

Q. But it was turned back at that time when it was first presented?

A. Yes, that would be very natural.

Q. Was this check afterwards presented for payment, or was it deposited in regular course in your institution? A. Yes, sir.

Q. By whom?

Mr. SCHLESINGER.—The same objection, your Honor please, to all this line of testimony.

The COURT.—Overruled.

Mr. SCHLESINGER.—Same exception. [461—410]

Mr. ALLEN.—By Mr. Silverstone, sitting there in the courtroom (showing)?

A. Yes, sir.

Q. Have you the deposit slip which shows that deposit? A. Yes, sir.

Mr. VANDERVEER.—I would like to object to this on the ground Mr. Silverstone's acts in this matter are immaterial and irrelevant, for the reason that Mr. Silverstone at this time is proven not to have been a conspirator, and hence his acts cannot be overt acts. Overt acts, to be such, must be acts of a conspirator.

The COURT.—Overruled.

Mr. SCHLESINGER.—And in furtherance of a conspiracy.

The COURT.—The testimony would be properly admissible as against defendant Goldberg.

Mr. SCHLESINGER.—It would not be admissible against him?

(Testimony of C. H. Howell.)

The COURT.—It would be.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—We offer that in evidence, now, gentlemen, that slip.

Mr. SCHLESINGER.—Same objection, same ruling, and same exception?

The COURT.—Yes.

Mr. ALLEN.—We offer that in evidence.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "45.")

Mr. ALLEN.—That, gentlemen, is a second deposit made June 2, 1908.

Q. Referring again to that check of Mr. Orr, payable to the Fowler Metal Company, which you hold in your hand, can you ascertain or tell me from the records of the institution as to whether or not any sum of money was ever abstracted from Mr. Silverstone's account in that identical sum? To refresh your memory I call your attention to this particular check I hold in my hand [462—411] (showing same to witness).

A. Our records indicate the next day it was drawn out.

Q. The next day it was drawn out? A. Yes.

Q. I will call your attention to any stamp of your bank on that.

A. It indicates it was paid through the clearing house on June 2d.

Q. On June 2d, 1908?

Mr. ALLEN.—We offer that in evidence, first marking it for identification.

(Testimony of C. H. Howell.)

The CLERK.—That is exhibit “36,” admitted yesterday.

Mr. ALLEN.—I don’t know whether the jury saw this check of Mr. Silverstone’s or not.

Q. That, then, was charged on June 2d and paid out of the account of Mr. E. Silverstone, is that true?

A. Yes, sir.

Mr. ALLEN.—That is all.

Mr. SCHLESINGER.—No questions.

Mr. ALLEN.—Might we, with consent of counsel, substitute certified copies for the deposit slips? They are the property of the bank.

Mr. SCHLESINGER.—You will make the comparison.

Mr. ALLEN.—Or Mr. House.

The COURT.—Let it go in the record.

Mr. ALLEN.—For these two deposit slips.

The COURT.—“44” and “45.”

Mr. ALLEN.—“44” and “45,” which are the original deposit slips kept in that bank, that substitutes therefor are to be permitted and to be personally examined by Mr. House or myself first, by stipulation of counsel for defendants. [463—412]

[Testimony of R. S. Walker, for Plaintiff.]

R. S. WALKER, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

My full name is Robert S. Walker. I am Assistant Cashier of The National Bank of Commerce in this city of Seattle, and have been connected with

(Testimony of R. S. Walker.)

that institution since 1899, and was with said bank in 1908. The Great Western Smelting & Refining Company and Emar Goldberg kept accounts at said bank during that year.

Q. Calling your attention to the deposit slip, which I hold in my hand, I will ask you whether you can identify that, Mr. Walker? (Exhibiting same to witness.) A. Yes, sir, I can.

(Witness continuing.) It is a deposit slip showing credit to the Great Western Smelting & Refining Company.

Mr. ALLEN.—It is offered in evidence. It comes from the original files in your bank?

A. Yes, sir.

Mr. ALLEN.—A deposit slip of June 1st, 1908, Plaintiff's Exhibit "46."

Mr. SCHLESINGER.—No objection.

The COURT.—It may be admitted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "46.")

Mr. ALLEN.—I will ask you first to state what is the meaning of that slip. The jury probably understand perfectly, but so as to make the record complete.

A. Well, it is a deposit ticket showing a credit of \$7,448.29 to the credit of the Great Western Smelting & Refining Company, and [464—413] it is made up of two items, one of \$7,417.09, which was a check drawn on the First National Bank.

Mr. ALLEN.—A check of what?

A. \$7,417.09 drawn on the First National Bank of

(Testimony of R. S. Walker.)

Seattle, and an item of \$31.20, which was drawn on some point out of the city.

Q. That is shown by the record of the slip itself?

A. Yes, sir.

Q. I ask you to identify the memorandum which I hold in my hand, if you can (exhibiting same to witness).

A. This is a deposit ticket dated June 2d, the year is not on here, showing a credit of \$1,479.60 to the credit of the Great Western Smelting & Refining Company.

Q. Can you, by reference to that memorandum as taken from your files in your bank, and the year, and the time on which it was filed, and by reference to your books, can you tell the year?

A. Yes, sir, I can.

Q. What was the year? A. 1908.

Q. Now, what—

Mr. ALLEN.—Now, calling your attention to this memorandum which I hold in my hand (giving same to witness).

A. That is a deposit ticket of June 1st, 1908, showing a credit of \$710 to the account of Emar Goldberg.

Q. And while the clerk is marking that I ask you to identify this other (handing paper to witness).

A. This is a similar deposit ticket dated June 2d, 1908, showing a credit of \$2,109.60 to the account of Emar Goldberg.

Q. To his personal account. The deposit slip of June 1st, 1908, showing two items, one for \$210, another for \$500, a total of \$710, deposited by Emar

(Testimony of R. S. Walker.)

Goldberg, that is number "48." Now, [465—414] "49," we will let counsel take a look at that.

Mr. SCHLESINGER.—No objection.

The COURT.—Admitted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "49.")

Mr. ALLEN.—That is a deposit of Emar Goldberg, \$2,109.60, Plaintiff's Exhibit Number "49," now admitted by stipulation. This is "47" (showing). It is a deposit slip in the name of Great Western Smelting & Refining Company in the sum of \$1,479.60 of June 2d, 1908.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "47.")

Q. Mr. Walker, will you kindly step down here a moment and refer to this ledger and the debits and credit items on this ledger. We will read, with your Honor's permission, into the record the items of this ledger.

Mr. SCHLESINGER.—We consent to that, subject to the general objection to its relevancy.

Mr. ALLEN.—Read the items; show the page of the ledger and date.

A. Just what do you want, the transaction beginning on June 1st, 1908?

Q. The item, so as to identify these items.

A. Well, the ledger shows a credit on June 1st, 1908, to the account of Great Western Smelting & Refining Company of \$7,448.29. And on the same day—

Q. What are the items on the deposit?

(Testimony of R. S. Walker.)

A. Well, I would have to take that from the ticket, from the deposit slip.

Q. The deposit slips I just showed you, they do correspond to that? A. Yes, sir.

Q. That is the correct amount; in other words, that shows the [466—415] correct amount of these deposit slips, is that right, if it does check? A. Yes.

Q. In other words, the ledger checks with these deposit slips you were just shown?

A. Yes, the credit on the ledger agrees with this account.

Q. Does it, in a general way, does the ledger agree with the other deposit slips which I have just shown you and which are admitted?

A. Yes, sir, with all of those.

Q. Those were charged to the credit of Mr. Goldberg and the Great Western Smelting & Refining Company in the exact amounts and the time as shown by the deposit slips heretofore identified, that right?

A. Yes, sir.

Mr. ALLEN.—Mr. Walker wants to correct the record. He was with the old bank that preceded the National Bank of Commerce; he was with the same institution, but it merged, and he didn't want any misunderstanding.

Q. Emar Goldberg's account in this ledger is identical as regards the amount as just identified by these deposit slips a moment ago?

A. Yes, sir, I have checked that.

Q. It does agree exactly?

A. I checked that last night, yes, sir.

(Testimony of R. S. Walker.)

Q. Do you want these deposit slips back?

A. I would like to have the originals.

Mr. ALLEN.—Here are the copies. I have marked them. We would like to offer in evidence a copy of that ledger record. Mr. Walker says it is right. Have you any objections? [467—416]

Mr. SCHLESINGER.—No.

Mr. ALLEN.—We offer them in evidence, those two sheets, by stipulation of counsel.

(Papers referred to received in evidence and marked Plaintiff's Exhibits "50" and "51," respectively.)

The COURT.—What are they?

Mr. RIDDELL.—Ledger sheets in National Bank of Commerce. "50" is the account of whom?

The CLERK.—Account of Great Western Smelting & Refining Company.

Mr. RIDDELL.—"51" is the account of Emar Goldberg. [468—417]

[Testimony of E. K. Riley, for Plaintiff.]

E. K. RILEY, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ALLEN.)

My full name is E. K. Riley. I live at 24 Smith Street, Seattle, and have resided there eleven years. I am the Auditor at the Seattle National Bank. In 1908 my occupation was that of Auditor with the Puget Sound National Bank. I have brought with me the records and accounts of the Seattle National

(Testimony of E. K. Riley.)

Bank for 1908. There was an account kept at said bank in 1908 in the name of Robert H. Orr, Paymaster United States Navy.

Q. I call your attention to a part of Plaintiff's Exhibit Number "5," being the first part thereof, a check (exhibiting same to witness). I will ask you whether or not, from the records and books of that bank, that check was, in due course of business, cashed and charged against the account of Paymaster Orr of the United States Navy, being a part of the Government funds of the United States?

Mr. SCHLESINGER.—Object to that as being immaterial, irrelevant and incompetent. Check speaks for itself.

The COURT.—He may answer.

Mr. SCHLESINGER.—Note an exception.

(Witness continuing.) A check of this amount was paid against Paymaster Orr on account of June 2d, 1908, and charged against the funds there in his hands as Paymaster.

Q. Take a look at the endorsement. That is a photographic copy; I have spoken to you, Mr. Riley, of the original check. Those *stamps in* accord with the stamp in use at the bank at that time, were they?

A. This check had been deposited in the First National Bank. And was cleared on the Seattle National Bank on June 2d, 1908. The said data was charged to the funds in the hands of Mr. Orr [469—418] on the books of the Seattle National Bank. The ledger of the bank shows that on June 2d, 1908, that said sum was charged against Mr. Orr's account

(Testimony of E. K. Riley.)

on that day. \$7,417.09 is charged against Robert H. Orr, Paymaster, on June 2d. On June 2d, 1908, a debit in the sum of one of the items is \$7,417.09, was charged against the account of Robert H. Orr, Paymaster. "Pay" stands for Paymaster. That check would be forwarded back by the bank at the end of the month to the Government. They were sent back to the Government, sent back to the supervisor; that is a Government rule.

Mr. ALLEN.—We offer in evidence this page of the ledger, that part of the ledger which has just been identified by the witness—is there any page to it so you can—

A. No.

Q. You might make out a little memorandum transcript? A. Yes, sir.

The COURT.—What page of the ledger?

Mr. ALLEN.—There is no page given, your Honor. It is under the head of "Orr."

A. Government account.

Q. Government accounts, volume—

A. There is no number on that.

Q. There is no number on that. A ledger in use in 1908, and under the head of Orr, Robert H. Orr, with the designation "Pay" after it, under the Government account.

Mr. ALLEN.—That is all.

On cross-examination by Mr. SCHLESINGER said witness testified as follows:

Q. You do not know when the particular check

(Testimony of E. K. Riley.)

referred to was delivered, do you, in point of time?
[470—419]

A. Well, I don't just get that.

Q. See if I can't make it plainer. I will withdraw that question. Do you know Mr. Kettlewell?

A. I do not.

Q. Do you know when it was that the Navy Pay Office delivered that check to any person, first delivered it? A. I do not.

Q. All that you know is that at some time that check came through the clearing-house into this bank? A. Yes, sir.

Q. And this reference you have made is simply as to the time of the reception of this check by your bank? A. Yes, sir.

Q. You were not concerned with the usual, with the prior travels of the check, were you?

A. Not a bit.

Q. Or the prior deliveries of the check, were you?

A. No, sir.

Q. You were not concerned with the question of the termination of any transaction with the Government covered by this check, were you?

A. Only as to the payment of the check.

Q. That is, you mean—

A. See endorsements are in proper order.

Q. You mean the ultimate reception of the check by your bank? A. Yes, sir.

Mr. SCHLESINGER.—That is all.

The said witness on redirect examination by Mr. ALLEN testified as follows: [471—420]

(Testimony of E. K. Riley.)

Q. In other words, it was paid, though, on June 2d, under the records of your bank, it is paid and charged against the funds of the United States Government on June 2d, 1908, by the records of the bank, isn't that true? A. Yes, sir.

Mr. ALLEN.—That is all.

On recross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Through how many hands that check went, or who first received the check, you have no concern?

A. No, that doesn't make any difference to us.

Q. In other words, a check might have been outstanding for one year, that wouldn't concern you; you are simply concerned with the time it ultimately reaches your bank? A. Yes, sir.

Mr. SCHLESINGER.—That is all.

Mr. ALLEN.—That check is never paid until it is accepted at your bank and charged upon the books of the account? A. Yes.

Mr. SCHLESINGER.—You don't mean to say other banks wouldn't use that check or pay the money on it before it reached your bank, do you, that you don't mean?

A. That is up to them.

Mr. ALLEN.—But it is paid on the books of your bank June 2d, 1908?

A. Yes, sir.

Mr. SCHLESINGER.—You received no notice not to pay that check from the Government?

A. Have no record of it. [472—421]

Mr. ALLEN.—Mr. Riley, will you make a tran-

(Testimony of E. K. Riley.)

script of this particular part of that memorandum so we can offer it in evidence? By stipulation of counsel, your Honor, that can be done.

Mr. SCHLESINGER.—Yes, objecting, of course, as to the competency of it and materiality, but permitting you to make a copy of the abstract.

The COURT.—The stipulation is a copy may be substituted for the original.

Mr. SCHLESINGER.—Very well.

The COURT.—That will be marked “52.”

(Paper referred to, copy to be substituted, received in evidence and marked Plaintiff’s Exhibit “52.”) [473—422]

[Testimony of John Flaherty, for Plaintiff.]

JOHN FLAHERTY, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ALLEN.)

My occupation is that of general yard master for the Northern Pacific. In the year 1908 my occupation was that of assistant yard master of said Northern Pacific Railway Company. I have in my possession certain data with reference to the movement of cars that come into the yard, and have data with reference to the movement of a car number 41,912.

Q. I wish you would take a look at your memorandum. We offer for identification this memorandum—that sheet over there—it is a sheet—ruled sheet which has no title or designation at the top.

(Testimony of John Flaherty.)

I cannot identify it more particularly at this time.

A. Form 1496.

Mr. ALLEN.—Can you from this sheet trace the record of that particular car?

A. Yes, sir.

Q. 41,912? A. 41,912.

Mr. ALLEN.—We offer this in evidence, gentlemen. Do you object?

Mr. SCHLESINGER.—If you say it is all right, it is all right.

(Instrument referred to received in evidence and marked Plaintiff's Exhibit "53.")

(Witness continuing.) My record shows with reference to the movement of car 41,912, a carload of zinc for the Shore Line. It was weighed and sent to the Great Western Smelting & Refining Company, set off at the Great Western Smelting & Refining Company. I hold in my hand a weight certificate that was taken here. [474—423]

Mr. ALLEN.—We offer that in evidence. That has been offered in evidence by stipulation of counsel.

The COURT.—Admitted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit "54.")

Mr. ALLEN.—(Reading same to the jury.) 4/27/08. What do these figures 4/27/08 mean?

A. That is the month and the day of the month.

Q. That would mean April 27, 1908, is that right?

A. Yes, sir.

Q. Mr. Flaherty, what was the next movement of

(Testimony of John Flaherty.)

this car? It went to the Great Western, and then what happened to it?

A. On May 5th received an order from the Great Western Smelting & Refining Company—

A JUROR.—Can't hear you.

Mr. ALLEN.—He says on May 5th they received an order from the Great Western Smelting & Refining Company. To do what?

A. To take the car to the Union Oil Company's dock.

Q. To take the car to the Union Oil Company's dock. Tell the date, tell what movement happened, and tell the date of the movement of that car?

A. We received this order at 11:30 A. M.

Q. Where does that show on there?

A. 11:30 A. M., May the 5th, here (showing). Here is the car number, carload of zinc (showing).

Mr. ALLEN.—We offer for identification this page.

The COURT.—Exhibit "55." Page in what book?

Mr. ALLEN.—This is orders number 5, May, 1908, number 37, your Honor, of the Northern Pacific.

The COURT.—Page what? [475—424]

Mr. ALLEN.—Page 12 of that record.

The COURT.—Page 12 of order.

Mr. ALLEN.—Volume 37.

The COURT.—19th of May?

Mr. ALLEN.—Yes, May, 1908, on the back of the book. We offer this in evidence, gentlemen.

Mr. KERR.—We have no objection.

(Testimony of John Flaherty.)

The COURT.—Admitted.

(Instrument referred to received in evidence and marked Plaintiff's Exhibit "55.")

Mr. ALLEN.—This is a number, 49,912, zinc. G. W. S. & R., which he has testified is Great Western Smelting & Refining Company, 11:30—I don't know whether that is midnight or—

A. A. M.

Q. What does U. O. C. Dock mean?

A. Union Oil Company Dock.

Q. Was that car then moved according to that record? A. Yes, sir.

Q. Have you any further record of that car at hand?

A. Well, on this page the car was afterwards loaded with flour by the Centennial Mill Company for Pier 14, *all it* is here. "Flr." stands for flour.

Mr. ALLEN.—We offer that item. That shows, then, that on the 14th at least that the car was empty, is that true?

A. Yes, it was loaded at the Centennial Mill.

Q. That means it was reloaded for something else?

A. Yes.

The COURT.—Is that the same exhibit?

Mr. ALLEN.—Yes. That is all. [476—425]

On cross-examination by Mr. MORRIS said witness testified as follows:

Mr. MORRIS.—Will you kindly hand me the exhibit that shows the number of the exhibit you had, the one that shows the destination of this car?

The COURT.—That is "53."

(Testimony of John Flaherty.)

Mr. ALLEN.—Here it is, that is the first movement of the car.

Mr. MORRIS.—Mr. Flaherty, I now hand you Plaintiff's Exhibit "53," and I wish you would state to this jury, if you can, from where that car was shipped?

A. I am unable to say where the car originated.

Q. Have you any record in your possession that shows how long that car was on the road after it was started? A. No, I haven't it at hand.

Q. Sir?

A. I haven't it in hand, but I can get it.

Q. Will you kindly get it and bring it into this court? A. I will try, sir, yes, sir.

Q. Maybe you have knowledge of the number of days that that car was en transit from La Salle, Illinois, to the city of Seattle. Have you that knowledge with you in your possession at this time?

A. No, sir.

Mr. MORRIS.—It is agreed that the record in this case may show—

The COURT.—Agreed that this car 41,912 was transported from the place of its origin to Seattle in eleven days.

Mr. MORRIS.—In eleven days, yes, sir.

Mr. ALLEN.—There was a breakdown, or something, and the car was changed. This car as it reached here was a different number, but it arrived here in eleven days. [477—426]

Mr. MORRIS.—The point I want to get here, this particular zinc mentioned in this indictment was

(Testimony of John Flaherty.)

started at La Salle, Illinois, and arrived in Seattle in eleven days?

Mr. ALLEN.—That is right.

The COURT.—I understand that is right?

Mr. ALLEN.—Yes, that is right.

Mr. ALLEN.—(Continuing.) The Government at this time desires to make this motion—your Honor is familiar with the situation. The Government at this time desires to dismiss this action as to Mr. Silverstone.

By the COURT.—Motion granted. Let an order be entered discharging the defendant, Silverstone, without bond.

[Testimony of John S. Howell, for Plaintiff.]

JOHN S. HOWELL, a witness produced on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. ALLEN.

My name is John S. Howell. I am manager of the Star Steamship Company. In the spring of the year 1908 I was in the steamboat business; that is, I was working for the steamboat business, but not in the Star Steamship Company. At this time I am the manager for the Star Steamship Company and properly in possession of their records. I have one of the record books of the company.

Q. About May 9, 1908, shipment on the steamer "Fidalgo." Can you identify that as a part of the record of your concern?

A. Yes, sir. [478—427]

(Testimony of John S. Howell.)

Mr. ALLEN.—Mark that as Plaintiff's Exhibit "56." This is from the Star Steamship Company's records number 1063, and dated May 9, 1908, No. 56.

(Whereupon Plaintiff's Exhibit 56 was introduced in evidence and read to the jury by Mr. Allen.)

(Witness continuing.) This is the duplicate; this white sheet is the original. The carbon copy put down when a bill is made to any firm for freight hauled. This remains as our witness. This means that there was 160 boxes of zinc taken out of M. P. car number 41,912, from the Union Oil dock to Bremerton—from Seattle to Bremerton. It was taken to Bremerton and delivered to Bremerton, and the weight of this shipment was 81,086. This is some junk scrap which went from the Alaska Junk Company, of 100,000 pounds, and this came from off the steamer "Watson." The boxes all weighed 81,086 pounds.

Mr. SCHLESINGER.—No questions.

[Testimony of **A. R. McNeil**, for Plaintiff
(Recalled).]

A. R. McNEIL, recalled, testified as follows on behalf of the plaintiff:

Direct Examination by Mr. ALLEN.

I have been sworn. A red tag system was installed in the Storekeeper's office at Bremerton during the year 1908, when Mr. Barnes came there.

Q. State to the jury what the fact was in reference to the use of any alarm signal, or similar signal, in use prior to that time. [479—428]

(Testimony of A. R. McNeil.)

Mr. MORRIS.—We object to this on the ground that it is a matter that was introduced in chief by the District Attorney. It was started yesterday after my cross-examination of this witness, and asked this question. I objected to it on the ground that it was not redirect examination. The counsel for the Government then requested that the Court permit him to go into this matter in chief. The gentleman went into the matter in chief; this witness answered questions on that subject, and I cross-examined him thereon, as I had a right to do, and he answered that these red signal tags or danger tags, or some tags of that kind, were inaugurated after Mr. Barnes entered the employ of the Government. Now, I respectfully submit it was the Government's case in chief. This witness has answered, and they have no legal right to impeach or discredit their own witness.

By the COURT.—OBJECTION OVERRULED. EXCEPTION ALLOWED.

A. Before Mr. Barnes came there was no regular system in force, putting danger tags for signals on the papers, except that a man would put his own tag on and write "urgent" across the face of it. It was not there before Mr. Spear came there. It was enforced then.

Q. This other white system of tags, whatever it was, was in use prior to that time? How long prior to that time?

A. I have seen those tags used—there was no other system. A man could use that tag if he so desired, pick up a piece of paper from his desk, write

(Testimony of A. R. McNeil.)

“urgent” across the face of it, and put it on. That was in use there during the time that Mr. Spear was Paymaster—prior to the time that the red tag system was used. [480—429]

On cross-examination by Mr. MORRIS the witness testified as follows:

Q. You say there was no regular system at the time at which you refer to?

A. No regular system; no.

On recross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Did you have any other alarm system in Mr. Kettlewell's office, burglary alarms or otherwise?

A. I wasn't in Mr. Kettlewell's office.

[Testimony of A. W. Graeff, for Plaintiff.]

A. W. GRAEFF, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. ALLEN.

My name is A. W. Graeff. My occupation at the present time is that of a rancher. I live about two miles from South Park—south limits of the city. In the year 1908 I was employed at the Puget Sound Navy Yard at Bremerton, Washington. In the month of April and May, 1908, I was wharfinger. I can identify this book. That is a record of the freight received at the Puget Sound Navy Yard during May, 1908.

Mr. ALLEN.—Identify this page 118. Any objection?

(Testimony of A. W. Graeff.)

Mr. SCHLESINGER.—The only objection is it refers to scrap iron [481—430] and other materials not involved here and incumbering the record. Otherwise we don't object.

The COURT.—Admitted.

(Whereupon said page 118 of said record was introduced in evidence and marked Plaintiff's Exhibit "57.")

(Witness continuing.) The last item under the figure "9" means that is the 9th day of the month. It stood for Naval Supply Fund. C. S. stands for cases—that is in my handwriting. The figures 438 at the right-hand side, under the head of "R. E. Q." in the column of requisitions are supposed to stand for the number of requisitions for which this material was supplied. That is the number, probably, I took off from the cases. I was receiving there for the Naval Yard authorities. [482—431]

[Testimony of Ben U. Slyster, for Plaintiff.]

BEN U. SLYSTER, a witness produced on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. ALLEN.

My name is Ben U. Slyster. I am a salesman for Schwabacher Hardware Company, and was employed by said concern in the year 1908 in the capacity of salesman.

Q. I call your attention to the part of Plaintiff's Exhibit Number "7," same being a proposal for supplies, or receipts, heretofore entered in evidence,

(Testimony of Ben U. Slyster.)

and ask you if you can identify that stamp or any part of the requisition.

A. Well, I used similar stamps.

(Witness continuing.) I recognize, at that time, that I was using a similar stamp.

Q. It bears there the impression, "Unable To Supply, Schwabacher Hardware Company." Tell the jury what you mean by that stamp, when you use it in your business there in the store?

A. We haven't the material on hand.

Q. It means they haven't the material on hand. Calling your notice particularly to the number of days within which to be supplied, of five, for a quantity of fifty thousand pounds of zinc, which is equivalent to a car of zinc, was Schwabacher Hardware Company unable to furnish that quantity of zinc within five days?

Mr. SCHLESINGER.—Doesn't that paper so indicate?

Q. I want him to explain what this does indicate.

A. Well, we don't carry zinc in this shape. We don't stock it in this shape. We stock it in sheets.

Q. This is for small sheets. That is small plates?
[483—432]

A. Well, it would be $1\frac{1}{2}$ x12x6.

Q. The Schwabacher Hardware Company were unable to supply these?

Mr. SCHLESINGER.—That is leading. He has already given his answer. I object to the question on the ground it is leading.

By the COURT.—I think it has been answered.

(Testimony of Ben U. Slyster.)

Q. Was or was not the Schwabacher Hardware Company unable to bid on this proposal, on the time and the quantity of material?

Mr. SCHLESINGER.—I object to that on the ground it has been asked and answered.

By the COURT.—Well, let him answer it again. OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. But we didn't have the material and couldn't supply it.

Q. Couldn't get it in that time, is that it?

Mr. SCHLESINGER.—I object to that upon the ground it is leading.

By the COURT.—Let the witness state the facts.

Q. What was the fact, then, about the inability?

Mr. SCHLESINGER.—We also object upon the ground he has already answered the question fully, twice, that they didn't deal in that kind of material.

Mr. ALLEN.—He said they didn't carry it in stock.

By the COURT.—Let him answer. Objection overruled: exception allowed.

A. I didn't get your last question.

Q. (Question read.) A car of zinc in that character?

A. Couldn't get the supply from the mill in that time; no.

Q. What was the business of the Schwabacher Hardware Company in the year 1908?

A. Selling hardware and metals.

Q. Hardware and metals. Did that include whole-

(Testimony of Ben U. Slyster.)

sale and retail, in that kind of business? [484—433]

A. Retail none, not in the general term of the word.

Q. Generally a wholesale business?

A. Generally speaking.

Q. Do you know from an examination—from your own experience in life—you have put in bids to the Navy Department, as a matter of fact, your concern has, has it not? A. They have.

Q. Do you know, from your experience as a salesman, what is the usual and reasonable profit during the year 1908, in the Spring, in the month of April or May, what would be a reasonable profit for the sale of metal, similar to the kind described in these former questions, that is fifty thousand pounds of rolled zinc, to be delivered to the Navy Yard?

Mr. SCHLESINGER.—I object to that upon the same grounds and for the same reasons as objections made to the last question.

By the COURT.—I think this question of reasonable profit is an element upon which testimony should properly be received.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

Q. You understand the question now?

A. I understand the question.

Q. What would you answer to that question?

A. A salesman doesn't get the exact cost, nor the cost of doing business. He gets his prices from the Sales Department, and quotes those.

Q. Aren't you familiar with your prices in the

(Testimony of Ben U. Slyster.)

Sales Department? A. Sir?

Q. Are you familiar with the prices in the Sales Department?

Mr. SCHLESINGER.—I object to that as calling for his understanding.

By the COURT.—Let him answer this question. If he is able to answer, all right; if not, let him pass it. [485—434]

[Testimony of Hiram S. House, for Plaintiff.]

HIRAM S. HOUSE, a witness produced on behalf of the plaintiff having been first duly sworn, testified as follows:

Direct Examination by Mr. ALLEN.

My name is Hiram S. House. I have been sworn. My official residence is Stanbarry, Mo. I am expert bank accountant for the Department of Justice, and am so officially designated. In that capacity I served under written authority under commission of the United States Commission at Washington. I have the commission with me.

Mr. ALLEN.—We want the record to show particularly as connecting up this evidence, that we offered this commission in evidence.

Mr. SCHLESINGER.—We object to it upon the ground it is incompetent, irrelevant and immaterial, no issue at all. We don't question his appointment; we don't question his competency.

The COURT.—Let it be filed. I don't see its materiality at all.

Mr. ALLEN.—We ask permission to substitute a

(Testimony of Hiram S. House.)

certified copy of it. By stipulation of counsel there is no objection to withdrawing that and substituting a copy.

(Whereupon said commission was introduced in evidence and marked Plaintiff's Exhibit "58" and read to the jury by Mr. Allen.)

Mr. SCHLESINGER.—(During reading of exhibit "58" to the jury.) We object to that as being entirely improper, as for the purpose stated in that photographic document, and we assign the remark of counsel as misconduct.

Mr. ALLEN.—I am reading from this exhibit.
[486—435]

Mr. KERR.—We ask the Court to instruct the jury to disregard it.

By the COURT.—This commission that has been read here seems to be for the purpose of reading the qualifications of Mr. House as an expert, and the fact that he is authorized by the Department of Justice to collect testimony in this case or any other doesn't, of itself, furnish any evidence in this case, or is not to be considered as evidence against the defendant.

Q. Acting under and by authority of that commission, Mr. House, you have time after time, and day after day, patiently collected from the files of the United States Navy Department, at Bremerton, and from the Navy Pay Office, in Seattle, and from the books of Mr. Corder and the Great Western Smelting & Refining Company, in the city of Seattle, and elsewhere, certain instruments and documents, which have remained in your possession for some time, is

(Testimony of Hiram S. House.)

that true? A. Yes, sir.

Q. Have each and all of those documents, heretofore offered in evidence—some of which have not, possibly, been offered in evidence,—have they all remained in the same condition, barring reasonable wear and tear in handling them, in which they were when you received them from the original files?

A. You refer now to the records which I got from the Yard and from the Navy Pay Office?

Q. Yes, sir and from Corder's books and the Great Western Smelting & Refining Company's books, as well, any of these exhibits which have been offered here? A. Yes, sir.

Q. There have been no interlineations or erasures of any kind? A. No, sir. [487—436]

By Mr. ALLEN.—We now offer in evidence, under that generous statement of Mr. House, any exhibits which have been offered here on behalf of the Government as showing him the legal custodian of any of these exhibits and which may have been offered for identification, may have been identified, but not finally offered in evidence, if there are any such.

Mr. KERR.—We object to any such general offer as that because there are a great many folders have been produced here, the contents of which have not been specified or referred to in particular. Under that general sweeping offer we have no way of telling what is going to this jury or the purpose of its going, or opportunity to object to it or opportunity to meet it when we come to our own case. If there is any part of any of these records that have not been

(Testimony of Hiram S. House.)

admitted by the Court, we desire to, and insist that the witness' attention shall be called to them, to that end that we shall be able to meet them in the proper way.

Q. I call your attention to 26 and 27—26 is taken from the files of the Great Western Smelting & Refining Company.

The COURT.—I think that the defendant's attention should be called to any particular item that you desire to call the jury's attention to.

Q. I call your attention to the Government's identification No. 21, page 4, which is stamped on the back, Plaintiff's Exhibit No. 21, 22 and 24, offered for identification. Is that taken from the file of the Great Western Smelting & Refining Company?

A. Yes, sir.

Q. It is now in the same condition in which you received it? A. Yes, sir. [488—437]

Mr. SCHLESINGER.—We object to the introduction in evidence of exhibit 21, marked for identification, embracing both checks together, embracing checks No. 4972 and 4973, upon the ground that they are all I. I., and have nothing to do with any of the issues involved in this case.

The COURT.—Objection overruled and exception allowed.

Mr. SCHLESINGER.—We call upon the Government now to disclose the purpose of the offer.

Mr. ALLEN.—These matters will be brought out further in Mr. House's testimony.

Mr. VANDERVEER.—I submit they should be

(Testimony of Hiram S. House.)

withheld until the materiality is shown. On the face of the check it appears it is immaterial. Unless counsel can state or show it is material, I submit the Court should not receive it. It goes in here absolutely blind, absolutely without apparent significance or meaning in the case. The same principle of law which requires the defendant to be informed in regard to matters which he should answer, requires he should be informed regarding this matter.

Mr. KERR.—As attorney for Mr. Goldberg, these two checks are checks that were signed by Mr. Goldberg as Manager of the Great Western Smelting and Refining Company. To the end that Mr. Goldberg and his attorneys may be advised at this time the purpose for which the Government is offering these checks, and as to the claim of the Government that they have any materiality, I insist that the Court shall now require the Government to state the materiality, if there is any materiality or relevancy to these checks, so we may know when we put Mr. Goldberg upon the stand.

Mr. ALLEN.—I am going at this time to offer to take these matters up and offer these checks in their order, the different exhibits [489—438] as we come to them in that way, just simply to oblige counsel. We will do it in their way if your Honor thinks best.

Mr. KERR.—I insist, if that is the position of the Government, your Honor, they shall disclose to us before they rest their case, what the Government is claiming to be the relevancy or materiality of these

(Testimony of Hiram S. House.)

checks, to the end that Mr. Goldberg, when we come to our defense, may intelligently meet the claim of the Government, and have an opportunity in the meantime to prepare these contractions, covering a great many transactions of five or six years, together, to make his defense.

The COURT.—Is there anything aside from what is disclosed on the face of the checks, that the Government desires to insist upon?

Mr. ALLEN.—I am going to follow their suggestion. I am going to take Mr. House's full recital of these matters, and as we reach each particular check, we will offer them in evidence. That is done for the accommodation of counsel.

Mr. KERR.—Not the accommodation. We demand it as a matter of right.

Mr. ALLEN.—In each case these different exhibits have been identified by some man who knew the signature and had the proper identification.

Q. (Mr. KERR.) Then I will state to the Court now, I will reserve my right to ask to withdraw them, if counsel does not prove the purpose of the Government in offering these checks, and the materiality. (Exhibit 21 withdrawn at this time.)

Q. Directing your attention to sheet No. 525 in the Great Western Smelting & Refining Company's book, this Government Exhibit No. 28, and the bill for that same transaction, state to the jury just what book that is?

A. The same being receiving book of the Great Western Smelting and Refining Company.

(Testimony of Hiram S. House.)

Q. Directing your attention to sales sheet No. 359? [490—439] A. 525.

Q. 525, that is right.

A. This shows on September the 30th, 1907—

Mr. VANDERVEER.—I object to the witness reading from a paper not yet in evidence.

The COURT.—You could offer these various exhibits together, and then if there is objections,—

Mr. VANDERVEER.—This bears date of September 30th, 1907.

Mr. ALLEN.—Your Honor will understand these instruments have all been identified and I wanted to make that original offer cover all.

The COURT.—Just offer them, then, without having the witness read to the jury what they contain.

Mr. ALLEN.—We now offer in evidence exhibit 28.

Mr. KERR.—We object to it on the ground it is immaterial, has nothing to do with this transaction.

Mr. ALLEN.—I offer in evidence this particular page, sheet No. 525, in the Great Western Smelting and Refining Company's book, and which is now open before the clerk.

The COURT.—Exhibit No. 28.

Mr. ALLEN.—Yes, sir, 525.

The COURT.—What is the objection to it?

Mr. VANDERVEER.—The objection that on the face of it it appears to be immaterial to any issue in this case. It relates to a transaction dated September, 1907, has no reference to this particular transaction, and before it is admitted counsel should show

(Testimony of Hiram S. House.)

to the Court, if not to the defendants, what its materiality is.

Mr. ALLEN.—That is what we propose to do.

Mr. SCHLESINGER.—We join in that objection.

Mr. SCHLESINGER.—Now, if your Honor please, I understand the unique proposition now advanced is they are going to show by [491—440] certain documents the value of certain goods at certain times. I submit that is not competent evidence because the conditions existing at that time are now shown by these exhibits. (Further argument by counsel.)

The COURT.—Objection is overruled and exception allowed. I think that when you show that they paid eight cents, the Government have a right to show what that was sold for, and have the whole transaction before the jury.

Mr. SCHLESINGER.—Let me ask you a question, please, Mr. Allen, while we are on the subject. Could you say now, taking this lot at 1907, could you say without a knowledge of the conditions surrounding the Great Western Smelting & Refining Company, how much they should have gotten for that same lot of zinc in 1907?

Mr. ALLEN.—We are going to show you how much you did get as a matter of fact.

Q. Referring to that particular matter which shows sheet No. 525 in the Great Western Smelting and Refining Company's books, what does that show?

Mr. KERR.—I object to it. It shows for itself.

(Testimony of Hiram S. House.)

Q. State, as an expert accountant, what does that sheet indicate?

Mr. KERR.—I object to that. The books shows for itself.

The COURT.—If there is anything upon the face of the records that demands an explanation, he can explain it.

Mr. KERR.—Nobody has claimed that. They are asking what the books show.

The COURT.—Proceed. Objection overruled and exception allowed.

A. This sheet No. 525 shows that on September 30th, 1907—

Mr. KERR.—You are reading from it now. I object to it upon the ground it is not the best evidence.

Mr. ALLEN.—It has been offered in evidence, this sheet has.

Mr. KERR.—Then if it has there is no use for the witness to read it. [492—441]

The COURT.—He can read it to the jury.

Mr. KERR.—It is not the business of the witness to read it.

A. (Continuing.) Matheson and Heggler, car-load of zinc plates, \$2,984.41.

Q. Now, I call your attention to Corder's check No. 589, dated August the 20th, 1907. Have you their check No. 589?

By the COURT.—What check are you offering?

Mr. ALLEN.—That has been identified.

A. Those haven't been identified.

(Testimony of Hiram S. House.)

Q. Are you familiar with the signature of W. A. Corder?

Mr. VANDERVEER.—We will admit the signature.

(Whereupon said check was marked for identification exhibit 59.)

Q. Can you, from the ledger of the W. A. Corder Company, that is the account to which these matters refer—

A. No, not from their ledger; they had no ledger account.

Mr. KERR.—What two matters do you refer to?

Mr. VANDERVEER.—A car of zinc in September, 1911.

Mr. ALLEN.—We offer this in evidence.

Mr. VANDERVEER.—I object as immaterial.

The COURT.—Let counsel examine the exhibit.

Mr. VANDERVEER.—It is a check bearing date August the 20th, 1907; I say it is irrelevant and immaterial. If it tends to prove anything, I suppose it tends to prove he paid for one-half car of zinc, which he owned one-half interest in in 1907. It is irrelevant and immaterial to this case. What is the difference whether Mr. Corder owned a dozen cars of zinc, to any issue in this case, whether Mr. Corder owned a car of zinc in 1907?

The COURT.—Proceed.

Q. I call your attention, then, to check No. 635 of W. A. Corder & Company, have you that check?

[493—442]

A. Yes, sir.

(Testimony of Hiram S. House.)

Q. Are you familiar with the signature of W. A. Corder and Company?

Mr. VANDERVEER.—We admit it.

Q. That is the signature, is it?

Mr. VANDERVEER.—Yes. Do you want me to admit Mr. Corder owns one-half interest in the zinc purchased by this company from the time—

Mr. ALLEN.—We want you to admit this is one-half of the fight.

Mr. VANDERVEER.—I will admit Mr. Corder was interested and one-half owner in nearly all the zinc purchased by the Great Western Smelting and Refining Company, from the time that he bought out the Pacific Engineering Company in the spring of 1906, down to the time you threw him in bankruptcy.

Mr. ALLEN.—Down through 1907?

Mr. VANDERVEER.—Yes, down through 1908.

Mr. ALLEN.—Until August, 1908?

Mr. VANDERVEER.—Yes, all the time reserving my objection that it is immaterial and irrelevant.

The COURT.—That disposes of 59, then?

Mr. ALLEN.—For the time it does.

Q. I call your attention to sheet 634 of the books of the Great Western Smelting and Refining Company.

The COURT.—Has that been identified as an exhibit?

Mr. ALLEN.—636, I should have said. No, it has not.

(Withdraws question.)

(Testimony of Hiram S. House.)

Q. I call your attention to Defendant's Exhibit "M," offered here on behalf of the defendant. What does that show with reference to the cost of the zinc of that particular car?

Mr. SCHLESINGER.—We object to that upon the ground it is I. I. I. It does not fix the question as to the price of zinc in Seattle, [494—443] at a particular locality, and he is absolutely disqualified from testifying. He has not been brought in here as a man knowing values, but simply as an expert accountant, and for no other purpose, and this testimony is in no wise binding upon Mr. Goldberg.

The COURT.—Is there anything on the face of this exhibit that requires an expert accountant?

Mr. ALLEN.—It has been read to the jury, admitted by the defendant. May I call attention to this particular item?

The COURT.—Yes, call his attention to any item.

Q. I call your attention to that part of Defendant's Exhibit "M," which fixed the price that this Matheson and Heggler sold them nearly a car of zinc in the month of September, 1907. Now, can you, by reference to sheet 539 of the Great Western Smelting and Refining Company's books, 360 and 543, can you state from that, state to the jury the price obtained by this concern for zinc at that time?

Mr. SCHLESINGER.—We object on the same ground. As I understand the province of an expert accountant, it is to make clear matters of complicated accounts, and point out, and that is what he is put here for. He is not put here to determine

(Testimony of Hiram S. House.)

what was or what was not a reasonable profit or selling price for this zinc.

The COURT.—I have asked the question to be read. If you cannot agree upon that exhibit, you can take that exhibit and refer to the books and show what the entry is and then he may answer.

Q. Can you, by reference to those books, ascertain the price obtained for zinc at that time, referring more particularly to 359, 360 and 543?

Mr. SCHLESINGER.—This is subject to our objection as to its competency and materiality.

The COURT.—Objection overruled and exception allowed. [495—444]

Q. Page 359, the Government's Exhibit No. 26 shows on September the 4th, 1907, a sale of zinc plates to John Simm Metal Works, 4587 pounds at \$9.50. What was the date of that?

A. September 4th, 1907, 4587 pounds at \$9.50.

Q. What do those other pages show?

A. \$435.77; cartage, \$1.00; total \$436.77.

Q. That was page 359? A. Yes.

Q. Referring to 360, what does that show?

A. Page 360 of Government's Exhibit 26—

Mr. SCHLESINGER.—Same objection.

A. (Continuing.) —shows a sale of September the 4th, 1907, to the Pacific Engineering Company, of 1036 Pounds at \$9.55, at \$958.44. Cartage, \$3.00; total, \$961.44.

Q. I call your attention to sheet 543; what does that show?

A. Page 543 of Government's Exhibit No. 26

(Testimony of Hiram S. House.)

shows the sale on November 20th, 1907, to the John Simm Metal Works of 8 boxes zinc plates, one-half by six by twelve, 3,992 pounds, at nine and one-quarter cents, \$369.26.

Mr. ALLEN.—We now offer in evidence these three sheets, 359, 360 and 543 and also sheet 525 with the two checks.

The COURT.—What are those?

Mr. ALLEN.—Government Exhibit 26.

Mr. KERR.—These parties were all jobbers, Simm and Company were jobbers in this city.

The COURT.—What exhibit is that? Exhibit 26?

Mr. ALLEN.—Yes, a part of exhibit 26. We offer these in evidence.

The COURT.—Objection overruled and exception allowed and exhibit 26 be admitted.

(Whereupon said sheets were admitted in evidence and marked as Government's Exhibit 26.) [496—445]

Mr. ALLEN.—Referring to sheet No. 11 of the Great Western Smelting and Refining Company—

The COURT.—What exhibit is that?

Mr. ALLEN.—I don't think it has been offered in evidence. Sheet 11 of the Great Western Smelting and Refining Company's books

(Whereupon sheet 11 was admitted in evidence and marked as Government's Exhibit 60.)

Q. I call your attention to sheet No. 11, do you find that? A. Yes, sir.

Q. You identified that as a part of the records of that concern? A. Yes, sir.

(Testimony of Hiram S. House.)

Q. What is the character of the book?

A. It is the receiving-book.

Mr. ALLEN.—We offer that in evidence. This is another one of these Corder's—

(Whereupon said sheet was admitted in evidence and marked Government's Exhibit 28.)

Q. This is Corder, showing their purchase of another car of zinc.

The COURT.—It has been identified.

Mr. ALLEN.—The whole book has as exhibit 28.

Mr. VANDERVEER.—I think this is a different matter, embraced in an offer or admission I made and which counsel accepted. If so, it is not a matter subject to proof. I want the records to show, as I stated at the time, I want to be sure it shows this is all over my objections and it is not material or relevant to any issue in the case. Subject to that reservation, I admit, I have admitted the fact, and it seems to me that the Government, having accepted my admission, the Government cannot now go into the issue in this detail.

Mr. SCHLESINGER.—I offer a suggestion. I don't want to be constantly objecting. May it be understood all this line of testimony is [497—446] deemed objected to upon the grounds heretofore specified by us, without the necessity of having to repeat the objection, and the exception follow.

The COURT.—Yes, sir.

Q. I call your attention to Corder's book No. 424, and the Great Western Smelting and Refining Company No. 574, of date December the 3d, 1907.

(Testimony of Hiram S. House.)

A. Yes, sir.

Q. What do you find there at sheet 424?

A. This book hasn't been put in evidence?

Q. Where did you find that book?

A. I got it from Mr. Garrett, the receiver for the W. A. Corder Company.

Q. It was part of the files of the W. A. Corder Company, was it? A. Yes, sir.

Mr. ALLEN.—We offer it for identification, and offer it in evidence.

Mr. VANDERVEER.—Do you offer the whole book?

Mr. ALLEN.—No, sheet 424.

Mr. VANDERVEER.—I object as immaterial and irrelevant; I do it for the purpose of presenting a question, a question in which both of us ought to be interested in getting the Court's ruling.

Mr. VANDERVEER.—Your Honor overrules my objection?

The COURT.—Yes, objection overruled and exception allowed.

Q. That sheet I will then read to the jury, ask you to read it, sheet 424, exhibit 60.

A. Sheet 424, Government's Exhibit 60, sales sheet of W. A. Corder Company, sold to United States Navy Pay Office, order 58 N. S. F., 9 rolls zinc plates, one-half by twenty-four by thirty-six; 9 rolls zinc plates, one-half by twenty-four by forty-eight; 9 rolls zinc plates, five-eighths by twenty-four by thirty-six; 3,713 pounds, 10 and one-fourth's cents, \$380.58. Bought by [498—447] W. A. Corder

(Testimony of Hiram S. House.)

Company direct. G. W. S. & Ref. Company, 4328, one-half profit.

Q. Do you often find on these boxes the initials "G. W. Company," and so forth?

A. They are generally spelled out.

Q. When you so find it it refers to the Great Western, does it, as you find it in your records?

A. Yes, sir.

Q. I will call your attention to that part of the Great Western Smelting and Refining Company's books, sheet 5,742.

A. Well, sheet No. 574, Government Exhibit No. 26—

Q. What is the date of that?

A. December the 5th, 1907.

Q. The other was December the 3d, I believe you stated?

A. W. A. Corder Company, Seattle, one-half profit of sales of plate zinc 24 by 36 and so forth, to navy yard, 2,344—

Q. In other words, the Great Western books do show they got one-half profit on the zinc shipped the navy yard by W. A. Corder Company?

Mr. KERR.—As to what it shows is a matter—

A. Yes, sir.

Q. Calling your attention to sheet 582—and sheet—

A. Sheet 582 of Government's Exhibit 26, dated December the 10th, 1907, charged to W. A. Corder Company, Seattle, one-half sale of zinc plates, month of November, \$119.65.

(Testimony of Hiram S. House.)

Q. I call your attention to the Corder book now, 525 now.

A. "Sales sheet No. 425 of the Corder Company is Government's Exhibit 60, dated December 30th, 1907, sold to United States Navy Pay Office, order No. 66, N. S. F., 9 cases one-half by 34 by 36 rolls zinc plate, 1058 pounds; one-half by 24 by 36 roll zinc plates at 11 cents, \$116.36. [499—448]

Q. I call your attention to 492.

A. Three pieces, one-half by 24 by 36, roll zinc plate, 339 pounds at 11 cents, \$37.29. Corder stock, enter separate. Then circled, is "304, 32, 33, 597, total 1048." Carried out as 1058, a difference of ten pounds.

Q. Sheet 492?

A. This is sales sheet 492, W. A. Corder Company, Government's Exhibit 60, sold to United States Navy Pay Office, December 30th, 1907, order 76, N. S. F., 11 one-half by 24 by 36 rolls zinc plate, 2848 pounds; one-half by 24 by 36 rolls zinc plate at 12 cents, \$341.88.

Q. Sheet 505?

A. Sheet 505, Government's Exhibit 60, sales sheet W. A. Corder Company, sold to the United States Navy Pay Office, Walker Building, December 27th, 1907, order No. 81, bureau N. S. F., 4421 pounds, one-half by 24 by 36, rolls zinc plate at 11 cents, \$486.31.

Q. 509.

A. Sales Sheet 509, Government's Exhibit 60, being sales sheet W. A. Corder Company, to the United States Navy Pay Office, December 27th, 1908, under

(Testimony of Hiram S. House.)

order No. 79, N. S. F., 5084 pounds, one-half by 24 by 36 rolls zinc plate at 11 cents, \$559.24.

Q. Page 626 of the Government Exhibit 26, sales sheet of the Great Western Smelting and Refining Company, dated January 9th, 1908, W. A. Corder Company, Seattle, one-half sale \$1,465.68, zinc plates to Government, of which \$699.04 was charged December 31st, 1907. Then extended, \$732.84, and under that \$699.04 and then \$33.80.

Mr. KERR.—That is the profit, is it?

A. That is the additional profit. This much was charged on December [500—449] 31st, it says. This is additional of the sale price, doesn't say anything about the profit.

Q. I understood Mr. Kerr to say it was the profit?

A. I misunderstood him.

Q. In the Corder book, just give briefly the sales in December; take sheet 568 and just give the name of the person, date, amount and price.

A. 568, date December the 3d, 1907, sold to Lewis, Anderson, Ford and Company, I remember Mr. Potts, 60, 1 by 6 by 12 rolls zinc plate, 1125 pounds at ten and one-quarter cents, \$115.31.

Q. Sheet 572?

Mr. KERR.—They are also jobbers?

Mr. ALLEN.—I don't know; I think they are.

On direct examination of said witness being resumed by Mr. RIDDELL, said witness testified as follows:

Q. You were showing the counter sales of zinc on

(Testimony of Hiram S. House.)

December the 11th. Give the date, number of pounds, and price per pound.

A. Date, December the 3d, 1907, to Lewis, Anderson, Ford & Company, 1 by 7 by 12—

Q. Just give the price per pound.

A. 1125 pounds at ten and one-quarter cents.

Q. Sheet 572?

A. Date is December 5th, 1907, sold to the Great Western Steamship Company, Saratoga, Seattle, Washington, 450 pounds at 11 cents.

Q. 574?

A. December 5th, 1907, Great Western Smelting and Refining Company, 567 pounds at 70¢, and ten and one-half dollars freight.

Q. Ten and a half dollars freight? A. Yes, sir.

[501—450]

Q. That is how many pounds? A. 567.

Q. You don't pretend, Mr. Kerr, that the steamship company was a jobber?

Mr. KERR.—I claim this last one is cost price.

Q. 582?

A. Dated December 26th, 1907, to Puget Sound Tug Company, 575 pounds at 11 cents.

Mr. RIDDELL.—I think we could stipulate when they are jobbers and when they are not.

Mr. VANDERVEER.—Also stipulate sales to the Government had to be shipped in paper boxes, separate, shipped across the Sound.

Mr. KERR.—I will admit these two, 11 cents, were not jobbers.

Mr. SCHLESINGER.—I don't know whether my

(Testimony of Hiram S. House.)

objection is quite clear, whether my objection covers this line of testimony as to the Corder transaction. May it be understood?

The COURT.—Yes, it is understood.

Q. 58?

A. December 14th, 1907, sold to Lewis, Anderson, Ford & Company, 190 at 10 and one quarter cents.

Q. You say they are jobbers?

A. Yes, they are jobbers.

Q. 593? A. I have got 592 here.

Q. Did you get 592?

A. No, I haven't read it. December 12th, 1907, sold to the Great Western Smelting and Refining Company, 1225½ pounds at 10¼ cents, cost to cut the same 876.

Q. 593?

A. Dated December 13th, 1907, Great Western Smelting and Refining Company, 225 pounds, no price, 1655 and freight 281. [502—451]

Q. 398?

A. Dated December 21st, 1907, sold to Northwestern Steamship Company, Laurretta Clara, 206 pounds at 11 cents.

Q. 206 pounds at 11 cents? A. Yes, sir.

Q. They are not jobbers, either?

Mr. KERR.—No, they are not jobbers.

Q. That is to a private individual. 608?

A. Dated December 28th, 1907, sold to Northwestern Steamship Company, Steamship "Dora," 478 pounds at 11 cents.

Q. That is again to a private individual?

(Testimony of Hiram S. House.)

Mr. KERR.—Those are all in December.

Q. That is on that car that was bought at 8 cents?

A. I don't know on which car this was sold. Some of them were small zincs, some of them large.

Mr. VANDERVEER.—If it is not material we move to have it stricken; it is offered on the theory it will explain the price at which a certain car was sold. The witness says it does not do so.

Mr. RIDDELL.—It was subsequent to the receipt of that car.

Q. Turn to Great Western Company, sheet 627?

A. Sheet 627. Great Western Smelting and Refining Company, dated January the 9th, 1908, W. A. Corder Company, Seattle, one-half sale zinc plates, December sale, 2904 pounds, \$168.04.

Q. Turn to Corder Company sales, sheet 629?

A. Dated January 13th, 1908, sold to Alaska Steamship Company, steamer "Olympia," 468 pounds at 11 cents.

Mr. KERR.—I concede they were not jobbers.

Q. Sheet 632?

A. Dated January 14th, 1908, sold to Pacific Engineering Company, 411 pounds at 10 cents. [503—452]

[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants. Edwin F. Meyer and Emar Goldberg. Vol. 3, Pages 295 to 452. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 14, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [504]

Q. 11 cents the day before and 10 cents this day.

(Testimony of Hiram S. House.)

Do I understand these people are jobbers or not?

Mr. KERR.—Yes, sir, probably are jobbers.

Q. The sale at 11 cents was to the consumer, and the sale at 10 cents to the jobber?

Mr. KERR.—Yes.

Q. Next sheet 637?

A. Dated January 20th, 1908, sold to Pacific Engineering Company, 38 pounds at 10 cents.

Q. 651?

A. Dated February 7th, 1908, sold to Lewis, Anderson, Ford Company, 234 pounds at $10\frac{1}{4}$ cents.

Q. 662?

A. Dated February 7th, 1908, sold to city of Seattle, Fire Department, 209 pounds at 10 cents.

Q. That was, I presume, not a jobber. 667?

A. Dated February the 4th, 1908, sold to Alaska Steamship Company, Saratoga, 500 pounds at $9\frac{1}{2}$ cents.

Q. 680?

A. Dated February 27th, 1908, P. C. S. F. Company, Pacific Coast Steamship "Coral," 2486 pounds at 9 cents.

Q. 2486 pounds at 9 cents?

A. All of these I am reading refer to zinc plates.

Q. Now 701.

A. Dated March 10th, 1908, United States Navy Pay Office requisition No. 336, 4198 pounds at $12\frac{1}{2}$ cents.

Q. This sale of 4198 pounds at $12\frac{1}{2}$ cents was how many days after the sale of the 2,000 pounds at 9 cents? A. 11 days.

(Testimony of Hiram S. House.)

Q. We have your requisitions 336. [505—453]

By a JUROR.—I didn't get all the dates. Were all these within a period of two or three months?

A. The sale to the Pacific Engineering Company was made February 27th, 1908, at 9 cents. The sale to the United States Navy Pay Office was made on March 10th at 12½ cents.

Mr. RIDDELL.—These sales started on December the 3d, 1907, and have progressed so far to March the 10th, 1908, December the 3d to March the 10th.

Q. Now, that last sale you mentioned was made to the navy yard on requisition No. 336?

A. Yes, sir.

Q. What is the date of that requisition? Is there any objection to our just using that requisition, it is just like any of the rest of those, it has never been admitted, and it isn't necessary to—where did you get that? A. From the Navy Pay Office.

Q. At Seattle? A. Yes, sir.

Q. As part of the Government's records?

A. Yes, sir.

Q. And it has been in your possession, official custody ever since you got it? A. Yes, sir.

Mr. MORRIS.—Complete records here?

A. Yes, sir.

Mr. MORRIS.—Never has been taken out?

A. No, sir.

Mr. MORRIS.—Have you, in your possession, the General Storekeeper's files on the same requisition?

A. Wasn't it in that list? Here is the General

(Testimony of Hiram S. House.)

Storekeeper's files in this folder. (Handing counsel papers.) [506—454]

Mr. MORRIS.—Defendant Meyer has no objection to the introduction of requisition 336.

Mr. ALLEN.—We offer it in evidence.

Mr. MORRIS.—Both the Navy Pay Office folders and the storekeeper's folder? A. Yes.

(Whereupon requisition 336 was introduced in evidence and marked Government's Exhibit 61.)

Mr. ALLEN.—Now, the other part of 336 we offer also for admission, Plaintiff's Exhibit 62.

Mr. RIDDELL.—That is Navy Pay folder 61.

The COURT.—Let it be admitted.

(Whereupon Storekeeper's folder, Government's Exhibit 62, is admitted in evidence.)

Q. Now, what is the date of that requisition 336? Plaintiff's Exhibit 61? A. February 25th, 1908.

Q. How many pounds?

A. 4,000 pounds, rolled zinc, 1 inch by 6 by 12.

Q. Corder Company bid?

A. Estimated cost is 12 cents, yes, sir; W. A. Corder bid.

Q. How much? A. 12½ cents a pound.

Q. Did Goldberg bid? A. Yes, sir.

Q. How much?

A. 12 3/5 cents a pound. Great Western Smelting Company.

Q. He signed the bid? A. Yes, sir.

Q. Did anybody else bid? A. Yes, sir. [507—455]

Q. Who?

(Testimony of Hiram S. House.)

A. The American Iron and Metal Company.

Q. How much? A. $12\frac{3}{4}$ cents.

Q. That is Rubenstein's Company, is it, that is signed by Rubenstein?

A. There was no official signature to it.

Q. Now turn to page 716?

A. Page 716, W. A. Corder Company, dated March 21st, 1909, sold United States Navy Pay Office, on the requisition No. 358—says, "Render invoice to general storekeeper as follows, 3,887 pounds $\frac{1}{2}$ by 36 rolled zinc plates at $12\frac{1}{2}$ cents, \$485.87. Charge their account, then write above rejected goods, 3,887 pounds, $\frac{1}{2}$ by 24 by 36 rolled zinc plates, $11\frac{1}{2}$ cents a pound, \$58.31.

Q. Now, do any of those requisitions which are on that say rejected material? A. Yes, sir.

Q. What are those numbers?

A. Requisition No. 81.

Q. For how much?

A. For about 2,800 pounds, estimated cost 15 cents a pound, \$420.

Q. How much was delivered—4,421 pounds?

A. 4,421 pounds.

Q. How much was rejected? A. 1,617 pounds.

Q. What is the next, the other delivery?

A. On requisition No. 79—

Mr. SCHLESINGER.—All over our objection as I. I. I.

The COURT.—The same matter, I guess, the Court has passed on several times. [508—456]

Mr. VANDERVEER.—Not precisely, going into

(Testimony of Hiram S. House.)

folders relating to different transactions.

The COURT.—What are you on now?

Mr. RIDDELL.—Taking up the same sales we were on, continuing. There is a debit at one-half cent a pound, relating to other zinc which has been rejected formerly.

Q. What was the date of the other requisition?

A. October the 7th, 1907.

Q. What does the amount call for?

A. 2,800 pounds.

Q. What is the price? A. 15 cents.

Q. How much was delivered? A. 5,084 pounds.

Q. How much accepted and how much rejected?

A. 2,824 accepted, 2,280 pounds rejected.

Q. Both these exhibits or bids were made by whom? A. W. A. Corder Company.

Q. What does the total amounts amount to of these two rejections of the W. A. Corder Company bear to the amount of the new requisition which you have just been discussing?

Mr. KERR.—I object to that as being entirely immaterial and irrelevant and has nothing to do with this transaction, taking up the rejections of the Corder Company.

The COURT.—Where is the materiality?

Mr. RIDDELL.—The materiality is this, in March, 1908, Mr. Meyer put through a requisition to take up just exactly the kind of zinc that was rejected for Corder and lying over there on the dock. All this time the price of zinc had been coming down, the sales show it came down from ten cents a pound

(Testimony of Hiram S. House.)

until they sold [509—457] 500 pounds to the steamship company at ten cents. Now he put this through at 12½ cents.

Mr. KERR.—The records show in the month of December, 1907, maybe later than that, we have sold and it was passed through jobbers at 11 cents, ten and a quarter cents, but it has nothing to do with this case.

The COURT.—Let it go in.

Q. Now, I understand that these two requisitions went through at 11 cents to W. A. Corder Company?

A. Yes, sir, they were awarded to W. A. Corder Company at 11 cents.

Q. And the identical amount of the amount rejected on these two propositions was afterwards put through on another requisition at 12½ cents?

A. A difference of ten pounds.

Mr. KERR.—I move to strike that out on the grounds it is absolutely irrelevant and immaterial to any issue in this case.

Q. Now, turn to the Great Western sales sheet No. 731, dated March 16th, 1908?

Mr. MORRIS.—Are these the papers you just handed to the clerk to have marked?

A. Yes, I think they are.

By the CLERK.—There are six here, your Honor; I don't know.

By the WITNESS.—I gave testimony from six folders. Mr. Morris asked them put in evidence.

Mr. MORRIS.—They were offered in evidence by the Government and I am insisting they go in.

(Testimony of Hiram S. House.)

By the CLERK.—They have never been identified.

The COURT.—The clerk nor anybody else can keep any record of these matters unless his attention is called to it. One is marked 63, that is 63. [510—458]

By the WITNESS.—Open purchase requisition No. 358, Navy Supply Fund, navy pay office; 64 is Navy Yard folder; exhibit 65 is the navy pay office folder, No. 79; No. 66 is Navy Yard folder No. 79; No. 67 navy pay office No. 81; No. 68 is Navy Yard folder No. 81.

The COURT.—Is that all? Are these all admitted in evidence?

Mr. MORRIS.—No objection.

(Whereupon Government's Exhibit 63, 64, 65, 66, 67, 68 are admitted in evidence.)

Mr. ALLEN.—We offer those he has read from. Those have been identified.

Q. Great Western sheet No. 731, dated March 16th, 1908.

A. Sheet 731, dated March 16th, 1908, charged to W. A. Corder Company, one-half sale of zinc during January and February to March 13th, \$439.47.

Q. Corder sheet 736? A. Dated April 26th.

Q. Putting in price to which he sold the consumers and to the navy yard. I can make a stipulation of that and make an offer of it.

Mr. KERR.—If you will tabulate what is in that book?

Mr. RIDDELL.—We offer in evidence those we have read and the following, and then Mr. House

(Testimony of Hiram S. House.)

will make a tabulation of it and we can introduce it in evidence as an exhibit.

Mr. ALLEN.—We are offering now those which have been read.

The COURT.—They all have been read to the jury and are in evidence now.

Mr. RIDDELL.—In addition to those we will offer Great Western sales sheet—offer Corder sales sheet 726 and Great Western sales sheet 120, and the following miscellaneous sales from the Corder book; 795, 821, 844, 868, and 872, dated respectively April 22d, April 28th, May 7th, May 13th, and May 14th, 1908, and at the following prices, 9½ cents, 9 cents, 9½ cents, 9½ cents, and 9½ cents. 875, dated May 16th, 1908, sold [511—459] to the navy yard at .1245 cents, requisition No. 444. Great Western sales sheet 120, dated May 29th, 1908, one-half zinc to navy, charging back one-half zinc to navy on this requisition, \$12.45. Great Western sales sheet 565, dated December 3d, 1907, sold to yard at 14 cents, and Corder sheet 576, dated December 5th, 1907, one-half United States Navy. Great Western sales sheet 566, dated December the 3d, 1907, sale to yard, 16 cents and Corder sheet 602, 12-27—one-half profit United States Navy. Great Western sheet 593, dated December 13th, 1907, sale to yard at 16 cents. Corder's sheet 603, 12-27—one-half profit to United States Navy. Great Western sheet 658, January 23d, 1908, Pacific Engineering Company at 8 cents. Corder 689, February 19th, 1908, one-half of that sale. Great Western sheet 667, February 21, 1908,

(Testimony of Hiram S. House.)

Finn Metal work and at $8\frac{3}{4}$ cents and Corder sheet 689, dated February 29th, for one-half of that. Great Western sales sheet 722, March 12th, 1908, sale to United States Navy 11 $19/100$ cents, and Corder sheet 710, at March 13th, 1908, for one-half of that. Great Western sales sheet 732, March the 12th, 1908, sale to United States Navy, 11.90 and Corder sheet 723 for one-half of that. Great Western sales sheet 754 dated March 24th, 1908, to the Postal Telegraph Company at $12\frac{1}{2}$ cents, and Corder sales sheet 723 for March 26th, 1908, for one-half of that. Great Western sales sheet 14-A, dated April 8th, 1908, reciting a balance on 732. Great Western sales sheet 753, April 29th, 1908, Pacific Engineering Company at $8\frac{1}{2}$ cents. Corder's sales sheet 805, April 24th, 1908, for one-half of that Pacific Engineering sale and Great Western sale sheet of April 29th, 1908, this deal in controversy here, at 4.45 at Corder's sheet 828 of April 30th, 1908, charging one-half of that. [512—460]

(By Mr. ALLEN.)

Q. Mr. House, I call your attention to folder of the navy yard, folder number 153, that is requisition No. 153 of Naval Supply Fund, that is a folder taken by you from the—

Mr. MORRIS.—Is that the folder that is in evidence?

Mr. ALLEN.—Not as yet. Let me change that to 169, requisition 169.

Mr. KERR.—What date is that?

Q. Date November 19th, 1907. I call your atten-

(Testimony of Hiram S. House.)

tion to requisition No. 169 of Navy Supply Fund; did you take this folder from the records of the Navy Department? A. Yes, sir.

Q. I call your attention to those persons bidding on this particular award.

Mr. KERR.—What date is that?

Mr. ALLEN.—November 19th, 1907.

M. KERR.—I object to that as I. I. I.; it has nothing to do with this controversy.

Mr. ALLEN.—I asked to have this stamped for identification.

The COURT.—It will be admitted. Objection overruled and exception allowed.

(Whereupon said folder was introduced in evidence and marked Government's Exhibit 69.)

Mr. KERR.—I object to the introduction of this transaction as not involving in this indictment in any way, too remote, and absolutely incompetent and irrelevant to any issue in this case.

Mr. ALLEN.—That is November the 7th, 1907.

The COURT.—Let him answer. Objection overruled and exceptions allowed.

Q. Who were these bidders on the award in this particular transaction?

Mr. KERR.— [513—461] I object to that on the ground it is immaterial who the bidders were.

The COURT.—Objection overruled and exception allowed. Go ahead and explain to the jurors who were the bidders.

A. The Great Western Smelting and Refining Company bid 14 cents a pound. They received the

(Testimony of Hiram S. House.)

award for 1,500 pounds at 14 cents. Seattle Hardware Company bid on 500 pounds of the 4,000—the requisition calls for 400 pounds. The Seattle Hardware Company bid on 500 pounds at $10\frac{1}{2}$. That amount was awarded to them. The Pacific Engineering Company bid on the entire 4,000 pounds at $10\frac{1}{2}$ a pound. They received the award of 2,000 pounds at $10\frac{1}{2}$ cents. The W. A. Corder Company bid on the entire amount at $14\frac{1}{4}$ cents. D. Boles said, “As we don’t handle zinc, are not in position to bid.” A. Hamback Company said, “Unable to bid.” Schwabacher Hardware Company: “Unable to supply.” Western Hardware and Metal Company, “Unable to furnish.” The unsigned bid of the John Finn Metal Works at $9\frac{3}{4}$ cents to be delivered in 12 days.

Mr. KERR.—What do you mean by the “unsigned” bid?

A. Well, it states at the top it is “John Finn Metal Works,” but it has no signature at the bottom and is filled in for $9\frac{3}{4}$ cents a pound. Bid of the Pacific Metal Works at $10\frac{1}{2}$ cents per hundred. Puget Sound Machinery Depot, “Unable to cope.”

Q. Was any award made in that transaction to either the W. A. Corder Company or to the Great Western Smelting and Refining Company?

A. Yes, sir.

Q. What was the amount of that award?

A. 1500 pounds at 14 cents a pound.

Q. Now, can you ascertain, and do you know any place in the books, that have been offered or identified

(Testimony of Hiram S. House.)

here of the books of either [514—462] one of these concerns, can you find such pages or parts therein that refer to that transaction and the participation of either of those concerns in that transaction? A. Yes, sir, I can.

Q. What do you find, what books do you find in reference to it?

A. This is page 565 of Government's Exhibit No. 26, being sales sheet of the Great Western Smelting and Refining Company.

Q. To whom was the award made for 1,500 pounds?

A. To the Great Western Smelting and Refining Company.

Q. What do the sales sheets show?

A. Dated December 3d, 1907, to the United States Navy Yard, Bremerton, Washington, under requisition 169, 3 boxes of zinc plates, one-half by 6 by 12, 1,478 pounds at 14 cents, \$206.92.

Q. Where else in the books of either of these concerns do you find any reference to this particular transaction?

A. Page 576 of Government's Exhibit 60, the sales sheet of the W. A. Corder Company, sold to the Great Western Smelting and Refining Company, dated December 5, 1907, one-half your invoice December 3, 1907, United States Navy, \$206.92 and excepted \$103.46, which is one-half of \$206.92.

Q. In other words, that refers to the same date and page of the Great Western delivery and sale to the navy yard on that day?

Mr. KERR.—I object as leading.

(Testimony of Hiram S. House.)

Q. State, summarizing this transaction, what was the part of the proceeds received by the Corder people on this award which was made to the Great Western Smelting and Refining Company?

A. One-half.

Q. They were both bidders in the original transaction, were they? A. They were.

Mr. ALLEN.—We offer in evidence this particular sheet referred to, [515—463] we offer in evidence at least these two pages. If they have not heretofore been identified and admitted, we offer in evidence the bill of W. A. Corder Company as follows—

Mr. KERR.—Your Honor ruled it all out originally, and now you let it go in, and it will involve us in an investigation of the accounts of the United States Government, which will take two weeks. The Government is not claiming there is anything wrong with this transaction. We have got to go in and investigate each one of these transactions before this jury. They are absolutely foreign to any controversy here. We have got to take these up now, one by one, in the light that the Government let this contract at 12 or 13 or 14 cents, and satisfy the jury whether all these stubs that were taken in it were regular.

By the COURT.—Proceed. Objection overruled and exception allowed.

Mr. MORRIS.—I have been holding a folder here for some time which you examined Mr. House on, Storekeeper's folder 153, which has not been marked

(Testimony of Hiram S. House.)

for identification or as an exhibit.

The COURT.—Let it be marked.

Mr. MORRIS.—I would like for you, you examined on it, I should like for you to have this introduced in evidence. We want to keep track of it. You examined on it.

Mr. ALLEN.—I have no objection to it going in the records.

(Whereupon storekeeper's requisition No. 153 was admitted in evidence and marked Government's Exhibit 70.)

Q. I call your attention to a navy yard folder for requisition No. 304, and I will ask you to identify that as being one of the exhibits taken by you from the navy yard and from the navy pay office as well.

A. Yes, I received it from the navy pay office, and this one from the navy yard. [516—464]

Mr. ALLEN.—I ask that these be offered for identification and stamped, February 5th, 1908.

(Whereupon folders in question was introduced in evidence and marked as Government's Exhibits 71 and 72.)

Mr. ALLEN.—Two memoranda which was proven by Mr. House in reference to requisition No. 169, have been marked as exhibit 26-A and 60-A and admitted in evidence. We now offer them in evidence.

Q. Can you ascertain from that folder the parties who bid on that particular transaction, this is now requisition No. 304, Plaintiff's Exhibit 71 and 72?

A. Yes, sir.

(Testimony of Hiram S. House.)

Q. Who are the bidders on that particular transaction?

A. The Great Western Smelting and Refining Company and 11.90 for immediate delivery.

Q. The Great Western Smelting and Refining Company, 11.90 immediate delivery?

A. Yes, sir. American Iron and Metal Company at 12½ W. A. Corder Company at 12½ to be delivered on March the 1st. A. Hamback Company "unable to bid." Pacific Engineering Company, "Cannot bid at present."

Q. Are those all the bidders? A. Yes, sir.

Q. W. A. Corder Company and Great Western Smelting and Refining Company were both bidders were they, for this particular award?

A. Yes, sir, and American Iron and Metal Company.

Q. To whom was it awarded?

A. Great Western Smelting and Refining Company.

Q. At what price or figure? A. 11.90.

Q. Are there any other books or any other memoranda in the books of the W. A. Corder Company or the Great Western Smelting and [517—465] Refining Company, which bear on that particular contract? If there are, please find them.

A. There is.

Q. What is the number?

A. This is page 132 Government's Exhibit No. 26, dated March 12, 1908. United States Navy Yard, Bremerton, Washington, under requisition No. 304,

(Testimony of Hiram S. House.)

N. S. F., zinc plates, one-half by 24 by 36, 5,000 pounds at 11.90, \$595. Total dollars, \$1190.

Q. That, then, is the bill of the Great Western is it on that particular award? A. Yes, sir.

Q. Now, then, find what memoranda there is or may be in the books of the W. A. Corder Company in reference to the same transaction?

A. The sales sheet page 723 of Government's Exhibit No. 60, being dated, being sales sheet of W. A. Corder Company, dated March 26th, 1908, sold to Great Western Smelting and Refining Company, one-half sale zinc plates to United States Navy Yard, \$585.

Q. What is that now, a bill of the Corder Company for one-half of the award made on this particular requisition, is that right? A. Yes.

Q. Do the books of the company show what the Corder Company received one-half of the money paid on that transaction?

A. Yes, sir, it shows that it was charged to the Great Western Smelting and Refining Company account, which was ultimately balanced.

Mr. KERR.—Have you offered this in evidence yet?

Mr. ALLEN.—Yes, we offer these particular pages.

Mr. KERR.—This is 372. When you offer that I want you to read to the jury this letter from the Paymaster of the United States Navy, purchasing pay officer, and I also want you to read this [518—466] from the Naval Constructor, United States Navy,

(Testimony of Hiram S. House.)

Chief Bureau, Washington, D. C.

Mr. ALLEN.—I don't intend to read all of them.

Mr. KERR.—I ask you if you will not now read these letters to the jury.

By the COURT.—Proceed.

Mr. KERR.—I want counsel to read these letters, I call your Honor's attention and the jury's attention to the contents of exhibit No. 72.

Q. I call your attention to a folder, apparently a folder taken from one of the navy yard offices, I will ask you to identify that, if you can. This is requisition No. 355, of date March the 6th, 1908.

A. Taken from the Navy Pay Office.

Q. Taken from the Navy Pay Office in the city of Seattle? A. Yes.

Mr. ALLEN.—We ask that that be marked for identification.

By the COURT.—That is exhibit No. 19 already in.

Q. Who were the persons who were bidding in that for that award?

Mr. KERR.—I object to that on the ground it is incompetent, irrelevant and immaterial, no matter involved in this controversy.

The COURT.—Objection overruled and exception allowed.

A. The requisition is for—

Mr. KERR.—I object to the witness reading from something that is not in evidence.

Mr. ALLEN.—We now offer this in evidence. It has been properly identified; it is 19, I think.

The COURT.—It has been admitted.

(Testimony of Hiram S. House.)

Mr. MORRIS.—This is the pay office folder. Have you the folder from the storekeeper's office of the navy yard? [519—467]

A. I have it here.

Q. 359, No. 19.

Mr. MORRIS.—I want the storekeeper's folder.

Q. Taking both of these folders, ascertain for us kindly, and give us the bidders and amounts?

A. You want me to tell what the requisition is for?

Q. Yes, what is the amount?

A. For 1933 boiler zincs, one-half by 6 by 12. Bidders were the Great Western Smelting and Refining Company at 12½ cents a pound, to be delivered at once; W. A. Corder Company at 12½ cents a pound to be delivered in one day; American Iron and Metal Company at 13 cents a pound to be delivered at once.

A. Hamback, "Unable to bid. Do not care."

Q. To whom was that contract awarded?

A. To the Great Western Smelting and Refining Company.

Q. At what figure? A. 12½ cents a pound.

Q. Can you ascertain or have you ascertained from the books of the W. A. Corder Company, or the Great Western Smelting and Refining Company, any further evidence in reference to that particular transaction, and if so, tell the jury what it is?

A. Well, I will have to go back a little bit.

Q. Go back to any part of the memoranda of the Company that you want here.

A. Government's Exhibit No. 17, being the general storekeeper's folder, requisition 193, shows that

(Testimony of Hiram S. House.)

on December 12th, 1912, there was delivered—there was awarded to the Great Western Smelting and Refining Company 4,000 pounds of zinc plate, one-half by 6 by 12, at 16 cents a pound. This same folder shows on the 14th day of December,— [520—468]

Mr. VANDERVEER.—I submit counsel is now asking this witness, one-half hour after your Honor sustained objection to it, the very thing your Honor said once he must not do. What these folders show is a matter of argument to the jury. Counsel is now trying to have this witness make his argument to the jury.

The COURT.—He can read the folders or any part of them, without comment.

Mr. VANDERVEER.—The folders have been read.

Mr. MORRIS.—Is that an exhibit in this case?

A. Yes, sir, No. 17.

The COURT.—Everything that is offered and admitted may be read to the jury, or any part of it.

Q. Do you find in the records of the company, either one of those companies, any reference whatever to this particular transaction we are talking about?

Mr. VANDERVEER.—I object as immaterial whether he does or does not.

The COURT.—Objection overruled and exception allowed.

A. This particular requisition refers to another requisition.

Mr. VANDERVEER.—I object to any testimony

(Testimony of Hiram S. House.)

on the part of the witness but the particular requisition referred to. Being in evidence—

Q. Read that part of the requisition which you think bears upon the matter I am talking about, and then refer—

Mr. VANDERVEER.—I object to any question upon any conclusion, the witness may arrive at about what it refers to.

Mr. SCHLESINGER.—If your Honor please, I ask permission at this time to make a copy of a document which has been lying on the various tables here, marked “Originals,” and entitled “Cases presented to the Grand Jury at Tacoma.”

Q. Can you find in these volumes any reference, or any volumes of [521—469] the Company with reference to either one of those particular folders?

Mr. VANDERVEER.—I object as immaterial, his conclusion whether it refers to one or the other.

The COURT.—Let him state if he can. Answer the question.

Objection overruled and exception allowed.

A. Yes, sir, by going back.

Q. Well, go back to any matter you want to, and get your date and then go and find it in the books wherever you please. [522—470]

SATURDAY MORNING SESSION.

November 1st, 1913, 10 A. M.

Mr. ALLEN.—Calling your Honor’s attention to exhibit “41,” which is two pages in the large ledger of the Matheson & Heggler Zinc Company, brought here by Mr. Nagus, counsel for defendants have

kindly consented to stipulate that Mr. Nagus might make a transcript of these two pages and offer that transcript in evidence as the original record, reserving to the defendants any exceptions they may have as to the materiality of the matter contained therein.

The COURT.—Very well.

Mr. ALLEN.—Now, this peculiar situation has come up. Mr. Spirk, who represents one of the defendants, Mr. Corder, doesn't want in, your Honor, that part of the ledger which was on page 564, I believe it is, and there were some suggestions made at that time about putting it in, and I don't know whether we definitely offered it or not, but we have no objection to it, but if counsel for defense will agree on the matter we would like to have it in.

Mr. SPIRK.—Counsel for Mr. Goldberg suggest we pass the matter temporarily as to including in this transcript of the books of the Matheson & Hegler Zinc Company—we reserve the right at this time, your Honor, to object to inclusion of the transcript of the Corder account in view of the fact my recollection is at the time the evidence was introduced that was not included in the offer.

The COURT.—Very well.

Mr. ALLEN.—The remainder of the exhibit is introduced in evidence, then, by stipulation of counsel.

The COURT.—That is exhibit “41”? [523—471]

Mr. ALLEN.—Exhibit “41”; yes, your Honor.

The COURT.—That already has been admitted, but that is now simply a stipulation that a transcript may be presented to serve the purpose of the original.

Mr. SCHLESINGER.—Yes, your Honor.

Mr. SPIRK.—There is only one item there apparently of the Corder account, but counsel and I may be able to agree upon that.

The COURT.—Let me know about that as I would like to instruct the jury upon that as to the extent that should be considered.

Mr. SPIRK.—I think this, your Honor, in case it should be ruled that should not be included, that portion of the transcript could be cut off.

The COURT.—Very well.

Mr. SPIRK.—I will advise your Honor as to that.

Mr. ALLEN.—The same stipulation, your Honor, just made in the case of “41” applies in the case of “40,” which is a copy of the Matheson & Heggler Zinc Company.

The COURT.—Just let the record show that by agreement of counsel the exhibit “40,” the original may be withdrawn and a copy of the exhibit is filed, and the copy to serve the same purpose as the original.

Mr. SCHLESINGER.—If your Honor please, with respect to exhibit “23” in evidence—

The COURT.—The check?

Mr. SCHLESINGER.—Yes, sir—there were objections made at the time these were offered, but owing to the confusion they were not perhaps properly recorded. It is understood that I may now make my objections.

The COURT.—Proceed.

Mr. SCHLESINGER.—We object, if your Honor

please, to the introduction [524—472] in evidence of a check dated June 2d, 1908, number 4978, in favor of W. A. Corder & Company in the sum of \$4,974.31, and signed by the Great Western Smelting & Refining Company by Emar Goldberg. Our objection to that is based upon the ground that it is subsequent to the alleged conspiracy, and is therefore immaterial, incompetent and irrelevant, it being after the alleged conspiracy had terminated. We make the same objection to check No. 4972, being a check in favor of Emar Goldberg—

The CLERK.—Exhibit “21.”

Mr. SCHLESINGER.—That is exhibit “21.”

The COURT.—Very well.

Mr. SCHLESINGER.—4973, being a check in favor of Emar Goldberg in the sum of \$210 and signed Great Western Smelting & Refining Company, upon the ground that has nothing to do with the transaction in question, does not relate to the alleged conspiracy and is a transaction occurring after the termination of the alleged conspiracy.

And the same objection, your Honor please, to check No. 4972 in favor of Emar Goldberg in the sum of \$500 and signed by Great Western Smelting & Refining Company. We make our objection upon the same ground.

And we further, if your Honor please, object to the introduction and admission in evidence of a check No. 1978, dated Seattle, Washington, June 1st,—

The COURT.—What exhibit is that?

Mr. SCHLESINGER.—That is exhibit “32.”

The COURT.—“32” is a check dated June 1st, 1908.

Mr. SCHLESINGER.—Yes, that is a check, a check payable to E. Goldberg in the sum of \$2,109.60, and signed by W. A. Corder [525—473] Company, by W. A. Corder, manager. Our objection to that is that has no relation to the alleged conspiracy, is not an overt act in furtherance thereof, and is a transaction occurring after the termination of any alleged conspiracy, and therefore is irrelevant, incompetent and immaterial, and this objection, if your Honor please, applies, it may be understood, to all checks and documents introduced in evidence by the Government relating to transactions occurring after the 26th day of May, 1908, and your Honor will make the same ruling heretofore made and we will take an exception.

If your Honor please, we will now reserve to ourselves the right at the close of the Government's case to make a motion to strike all of this from the evidence, and we will wish to argue at some length.

The COURT.—That is a matter that is always proper for the defense. Proceed. The objections to these are overruled and the exhibit admitted.

The CLERK.—How about “21” and “23”?

The COURT.—“21” and “23” were admitted before, “32” is now.

The CLERK.—My records didn't show “21” or “23” admitted.

The COURT.—Mr. Allen, there is exhibit “24” and “34” doesn't seem to have been admitted.

Mr. SCHLESINGER.—Your Honor, it may also be understood that these objections of ours also go to the testimony of the various bank officials concerning the various transactions of these checks.

The COURT.—Those objections are in.

Mr. SCHLESINGER.—There was so much confusion, and the objections were made but don't appear in full.

The COURT.—I understand that all of that evidence went in under your objection. [526—474]

Mr. SCHLESINGER.—Yes, your Honor, that is the understanding, as to the bank officials.

Mr. ALLEN.—What check is this, "24"?

The COURT.—Let the record show that "27" was admitted.

Mr. ALLEN.—"24" has been filed and admitted. Well, we now offer this check under exhibit "24" in evidence, your Honor. It is check for \$336—

The COURT.—Show it to defendant.

Mr. ALLEN.—Signed by Emar Goldberg—signed by the Great Western people and payable to Emar Goldberg.

Mr. SCHLESINGER.—We object, if your Honor please, to the introduction of this certain evidence upon the ground that it is prior to the conspiracy, alleged conspiracy, as laid in the indictment, and therefore is immaterial, irrelevant, incompetent and not within any of the issues.

The COURT.—Admitted, and the jury will consider it is only admitted as a circumstance as indi-

eating the manner of these various acts. Has "30" been admitted?

The CLERK.—Yes, your Honor.

Mr. ALLEN.—How about "34"?

The CLERK.—"34" not admitted.

Mr. ALLEN.—How about "27"?

The COURT.—Admitted.

Mr. ALLEN.—What other missing ones have you?

The CLERK.—I have "29A" and "29B," two checks in the check-book 29.

Mr. RIDDELL.—Those were admitted and shown to the jury.

The CLERK.—"34" that leaves, cash-book.

The COURT.—Your objection, Mr. Schlesinger, to "34," that is cash-book of 1908, that covers that same—

Mr. SCHLESINGER.—Yes. [527—475]

The COURT.—Let the record so show and let that be so admitted.

Mr. ALLEN.—Your Honor, we offer in evidence at this time a certificate of our Secretary of State under seal and signature of October 25th, 1913, certifying to the fact the Great Western Smelting & Refining Company—

Mr. SCHLESINGER.—We are willing to admit, if your Honor please, at all of the times mentioned in the indictment the Great Western Smelting & Refining Company, a corporation, legally transacted business within the state of Washington.

Mr. RIDDELL.—You won't need to put it in, then.

(Testimony of Hiram S. House.)

Mr. SCHLESINGER.—It will be in evidence, your Honor, because it is a stipulation.

Mr. ALLEN.—Stipulated that the Great Western Smelting & Refining Company, at all times alleged in this indictment, was a corporation organized—he doesn't know under what state exactly.

Mr. SCHLESINGER.—I think under the state of Illinois.

Mr. ALLEN.—Of which Mr. Goldberg was manager during this time.

Mr. SCHLESINGER.—Manager in the city of Seattle.

The COURT.—Very well. [528—476]

HIRAM S. HOUSE, on the stand.

Direct Examination (resumed).

(By Mr. ALLEN.)

Q. Mr. House, yesterday I started to ask you in regard to your qualifications, and I think the stipulation shows in the record you are qualified as an expert accountant and bookkeeper. There is no objection to that?

Mr. SCHLESINGER.—Mr. House is a competent accountant.

Mr. MORRIS.—We are willing to admit he is a man of most remarkable ability.

The COURT.—As an accountant?

Mr. MORRIS.—Yes.

The COURT.—All right, proceed.

Mr. ALLEN.—Mr. House, along sometime ago did you make any—calling your attention to Plaintiff's

(Testimony of Hiram S. House.)

Exhibit which has to do with the requisition made for 50,000 pounds of zinc plate on April 1st, 1908, calling your attention to that particular requisition and the statement contained therein to the effect that this requisition was made to fill requisitions of the Atlantic Battleship Squadron, calling your attention to that particular part of that exhibit now in evidence, did you make any search at any time in the records and files of the United States Navy Yard Office at Bremerton with reference to that particular fact?

A. Yes, sir.

Q. With what result?

A. I found no ships' requisitions on file over there.

Mr. SCHLESINGER.—Now, your Honor please, it seems to me that doesn't call for the subject of expert testimony, the fact he may have made a search among certain records. I don't think he [529—477] is entitled to give the result of that search. As I understand the qualifications of accountant are to give the result of certain figures, which figures he ought to have with him to show to the jury, and we object to that as not being a proper question.

The COURT.—Now, if he has familiarized himself with the records in the Navy Office he would be competent to testify as to all of these facts, and the record will so show.

Mr. SCHLESINGER.—The records would be the best evidence.

The COURT.—The jury will not have time to read over all the records. Overruled. Exception.

Mr. ALLEN.—What was the answer?

(Testimony of Hiram S. House.)

A. I found no requisitions on file April 1st, with the exception of one for the "Washington," which was not an Atlantic battleship boat.

Q. It was connected with the Pacific Squadron, was it? A. I believe it was.

Q. And it afterwards joined the Atlantic Squadron, after it came here?

A. I don't know as to that.

Q. Who was with you when you made this search?

A. Why, Mr. Barnes and Mr. Bannon. I made two searches over there. Mr. Barnes was with me once and Mr. Bannon another time.

Q. You spent what length of time in trying to ascertain this fact? A. About a day and a half.

Q. I call your attention now, Mr. House, to Plaintiff's Exhibit No. "7." Have you that Plaintiff's Exhibit Number "7" with you? A. Yes, sir.

Q. Which is the requisition 438 for 50,000 pounds of zinc?

A. This is the Navy Pay Office requisition.

Q. You have there the Navy Pay Office folder? [530—478] A. Yes, sir, for 438.

Q. What is the date of that requisition again?

A. April 1st, 1908.

Q. What is the date of the proposals?

A. April 11, 1908.

Q. What date were the proposals opened and the award made? A. April 15, 1908.

Q. The date of the award, then, is the same date? Is that right? A. Yes, sir.

Q. Who were the bidders on this occasion, partic-

(Testimony of Hiram S. House.)

ularly directing your attention to the Great Western Smelting & Refining Company and the W. A. Corder & Company? Were they both bidders?

A. They were.

Q. State what was the amount, the price bid by each of these men.

A. The Great Western Smelting & Refining Company, by Emar Goldberg, bid 12½ cents on 50,000 pounds of rolled zinc, \$6,250, to be delivered within five days after the award. The W. A. Corder Company bid twelve and six-tenths cents per pound on 50,000 of zinc, \$6,300, to be delivered within five days after date of award.

Q. I see. And the award shows that it was made to the Fowler Metal Company at twelve forty-five; is that true?

A. Yes, sir, to be delivered within five days.

Q. The proposals call for delivery within five days, is that the record of those two particular bidders?

A. Yes, sir.

Q. Did you ascertain from your investigation the date the material was actually delivered at the yard?

A. Government check No. 57, page 118; shows on May 9th a delivery under this requisition 438.

Q. May 9th? [531—479]

A. May 9th, yes, sir.

Q. The award was made on May 15th for delivery in five days? A. April 15th.

Q. April 15th for delivery in five days, and the delivery was made on May 9th, a matter of—

Mr. ALLEN.—Mr. House, in what book or memo-

(Testimony of Hiram S. House.)

randum of the Great Western Company, following the date of this award, do you find the first reference to this particular transaction?

A. The first record is on the 21st of April, 1908, when—

Q. In what book?

A. In check-book, in their check-book, Government's Exhibit Number "29A," check No. 4838, dated April 21, 1908, payable to Dexter Horton & Company, Matheson & Heggler Zinc car, \$2,668.75.

Mr. RIDDELL.—Is the number of the car shown there? A. No.

Mr. ALLEN.—\$2,668.75. Does it indicate payment of draft or anything of that sort?

A. No, it doesn't say.

Q. That has been offered in evidence, your Honor. What is the next memorandum on the books of the Great Western with reference to that particular transaction?

A. Government's Exhibit Number "28," which is a receiving book of the Great Western Smelting & Refining Company, register No. 41.

Q. That is what, now, receiving book of—

A. Of the Great Western Smelting & Refining Company. States on April 29, 1908, from Matheson & Heggler Zinc Company, zinc plate, 5,014, at \$5.80, \$2,981.20, less discount, 8 per cent \$232.06, net \$2,668.75; car I. C. 35,890.

Q. Do those figures accord with the draft to which you just made reference, to the check? [532—480]

A. Same amount, yes.

(Testimony of Hiram S. House.)

Q. That is the Great Western? A. Yes, sir.

Q. Following the same court, what is the next memorandum in the Great Western's books with reference to that particular transaction?

A. Government's Exhibit Number "25," page—there is three sheets here. It is the second sheet, which is account of W. A. Corder Company on the ledger of the Great Western Smelting & Refining Company. The second item—

Q. What is the date of the item, now?

A. April 20th, 1908.

Q. April 20th.

A. One-half cost car 29,563, \$1,334.37.

Q. You have checked the number of that car with reference to this particular car of zinc? How does it accord?

A. It is a different number of the car, but it is just half the amount of that check.

Q. What is the next reference on the books of the Great Western people with reference to that?

Mr. SPIRK.—Where does that car number show here? A. Right here (showing).

Mr. SPIRK.—This item here is car 29,563, isn't it?

A. Yes, sir.

Mr. SPIRK.—That is what the record shows, 29,563. A. Yes.

Mr. ALLEN.—What is the next memorandum on the books of the Great Western with reference to this particular transaction?

A. Government's Exhibit Number "25," the same account, W. A. Corder & Company, shows a credit on

(Testimony of Hiram S. House.)

the 21st of April of \$1,334.37 cash.

Q. How does that cash credit appearing on the books of the Great [533—481] Western, how does that accord with the debit memorandum for one-half of this zinc? A. It is the same amount.

Q. What is the next memorandum you find from the records of books of the Great Western with reference to this transaction?

A. Government's Exhibit No. "30" is a check number 1919 of the W. A. Corder Company, dated April 20, 1908, payable to the Great Western Smelting & Refining Company for \$1,334.37.

Q. Then the dates are in accord and the amount in accord for the payment of one-half of this car of zinc, is that it? A. Yes, sir.

Mr. ALLEN.—What is the next on that memorandum, Mr. House?

A. The next memorandum is Government's Exhibit "29B," which is check 4869 of the Great Western Smelting & Refining Company, dated April 29, 1908, payable to J. W. Allen, agent, car of zinc, 665.66.

Q. Have you checked the time of payment of that check and the time of the arrival of the car and other matters so that you could tell the jury as to whether or not that check is apparently in payment of the freight on this car of zinc?

A. This check is dated the same day that the entry is made in Government's Exhibit Number "28."

Q. That, then, is a check of the Great Western paying for the freight on this particular car of zinc?

(Testimony of Hiram S. House.)

A. Yes, sir.

Q. What entry thereafter do you find on the books of the Great Western with reference to that part of the transaction?

A. Government's Exhibit No. "25," at page 2, which is ledger account of the W. A. Corder Company, on the Great Western Smelting & Refining Company's books, the third item shows a debit to W. A. Corder account on April 30th, one-half freight, car 39,890, \$327.83. [534—482]

Q. What comparison is there between the charge made upon the books of the Great Western at this time with reference to the cost of the freight of that car? A. It is just half.

Q. What memorandum do you now find in the books of the Corder Company, or elsewhere, with reference to this same transaction?

A. That completes the purchase of the zinc.

Q. Referring now to transactions thereafter with reference to the payment, disposition of the funds arising from the sale of this zinc. Take up the first memorandum you find with reference to that.

A. Government's Exhibit No. "27," page 66, which is sales sheets of the Great Western Smelting & Refining Company, dated April 29, 1908, is a charge to the Fowler Metal Company, which is 24 Brannan Street, San Francisco, California, under Government requisition 438 N. S. F., 119 boxes zinc plate $\frac{1}{2}$ by 6 by 12, 59,575 pounds at \$12.45, \$7,417.09. Then at the bottom is a note, "Ship to U. S. Navy Yard, Bremerton, Washington."

(Testimony of Hiram S. House.)

Q. That is a charge, then, on the books of the Great Western corporation charging the Fowler Metal Company with 59,000 pounds of zinc?

A. Yes, sir.

Q. What next memorandum, or what memorandum do you next find with reference to this transaction?

A. Government's Exhibit "25," page number 1, which is the ledger account of the Fowler Metal Company on the books of the Great Western Smelting & Refining Company, shows the posting of this sales slip. It reads, "April 29, 1908, zinc to Navy, \$7,417.09."

Q. Have you checked the amount of that entry in the ledger of the Great Western against the amount of the check which paid for this car of zinc in this particular requisition? [535—483]

A. I don't quite understand it.

Q. (Question repeated.) Paid by the Government for this car of zinc? A. Yes, sir.

Q. The amounts are the same, are they?

A. Yes, sir.

Q. What entry do you next find in the books with reference to this matter?

A. This book hasn't been offered in evidence, Mr. Allen.

Q. Where did you get that book?

A. Got it from the office of the Great Western Smelting & Refining Company.

Q. That is, the Great Western Smelting & Refining Company of Seattle, Washington?

(Testimony of Hiram S. House.)

A. Yes, sir.

Q. You found it down there among the records?

A. Yes, sir.

Mr. ALLEN.—You admit, Mr. Schlesinger, that is part of your property?

Mr. SCHLESINGER.—Yes, sir, subject to the same objection, your Honor, please.

A. I omitted one thing.

Mr. ALLEN.—Very well.

A. There was one item that I didn't get a few minutes ago that appears here. You want to make this book?

Mr. SCHLESINGER.—Mark that particular page of the book now.

Mr. ALLEN.—You want to take this item up right now? A. Yes.

Q. Let us identify it in the record. What is the book you were just looking at?

A. It is the journal and cash-book of the Great Western Smelting & Refining Company. [536—484]

Mr. SCHLESINGER.—Which particular item is it, Mr. Allen, that you want? (Mr. Allen indicates same.) Under our same objection.

The COURT.—Yes, same ruling.

Mr. ALLEN.—Identify it in the record there. This is cash-book and journal of the Great Western Smelting & Refining Company, and this is page 6 thereof, line—I couldn't figure out.

A. And also page—there is another page there.

(Testimony of Hiram S. House.)

The COURT.—Great Western Smelting & Refining Company?

Mr. ALLEN.—Yes, sir, cash-book and journal.

(Page 6, Plaintiff's Exhibit "73" marked and received in evidence.)

A. Reading from Government's Exhibit Number "73," page 6, on the twelfth line, appears the entry under date of May 15, 1908, "Freight, iron from Frisco, \$185.40, Zinc to Navy Yard, \$60.75, which, extended, \$246.15, which check No. 4,946 was issued for that.

Q. How does that check with any exhibit which has been offered heretofore?

A. Government's Exhibit No. "23," which is check 4946 of the Great Western Smelting & Refining Company, dated May 15, 1908, payable to the Star Steamship Company, for \$246.15, on the back under head of "distribution": Freight on iron, Frisco, \$185.43; U. S. N. Yard, freight on zinc, \$60.75.

Q. What next memorandum do you find?

A. On Government's Exhibit Number "73," page 6, line 14, shows under date of May 15th, 1908, a debit to W. A. Corder, one-half freight paid on zinc to navy yard, \$30.37.

Q. How does that check as regards the amount of the total sum paid?

A. It is just half of the freight to the yard.

Q. What next entry on memorandum do you find with reference to this [537—485] transaction; what one do you find the next?

A. Reading from Government's Exhibit Number

(Testimony of Hiram S. House.)

“73,” page 9, line 2, shows a receipt of cash on June 1st, 1908, from the Fowler Metal Company of \$7,417.09.

Q. What is the date? A. June 1st.

Q. June 1st shows what sum?

A. By cash from the Fowler Metal of \$7,417.09.

Q. That page has been identified, has it?

A. Yes, sir.

Q. Page 9 of this same record and line—

A. Line 2.

Q. Line 2 of that page 9. What reference to this same transaction do you next find on the books of account?

Mr. VANDERVEER.—We will make the same objection I made several times yesterday, it is not competent for the witness to say what certain things show or to state what his conclusions are regarding the connection between various things.

A. He is reading, I understand, these several exhibits.

Mr. VANDERVEER.—I am objecting to the question. The question is, what next do you find, what reference do you find?

The COURT.—Proceed.

Mr. VANDERVEER.—Note an exception.

The COURT.—Let him read. I don't want the witness to state his conclusion on these matters, but state the subject by item.

A. Government's Exhibit Number “25,” page 1, ledger account of the Fowler Metal Company on the Great Western Smelting & Refining Company's

(Testimony of Hiram S. House.)

books, a credit to the account of Fowler Metal Company, dated June 1st, 1908, \$7,417.09 cash.

Mr. ALLEN.—What is the next entry you find?

A. Government's Exhibit Number "25," page 2, which is the ledger [538—486] account of the W. A. Corder Company on the Great Western Smelting & Refining Company's books, line number 6, is a credit dated April 30, 1908, for \$3,708.55; memorandum, "one-half zinc to Navy, Fowler."

Q. "One-half zinc to Navy, Fowler." How does that check in regard to amount?

A. That is just one-half of the amount received from sale of Fowler zinc.

Q. What memorandum do you next find with reference to it?

A. Reading from Government's Exhibit Number "33," which is sales sheet 828 of the W. A. Corder Company, dated April 30, 1908, a debit to the Great Western Smelting & Refining Company of "one-half your invoice to Navy 1½ by 6 by 12 zinc, \$3,708.55."

Q. How does that check?

A. That is one-half the amount received for the Fowler Metal Zinc.

Q. What item do you next find, or what memorandum, as regards this particular transaction?

A. Reading from Government's Exhibit Number "31," which is the ledger account of the Great Western Smelting & Refining Company on the books of W. A. Corder Company, page 4, on the 16th line, is a charge to the Great Western Smelting & Refining Company, under date of April 30th, zinc \$3,708.55.

(Testimony of Hiram S. House.)

Q. How does that check with the particular car of zinc in amount?

A. Delivered to the Government?

Q. Yes. A. It is one-half.

Q. What is the next memorandum?

A. Reading from Government's Exhibit Number "23," which is a check number 4978 of the Great Western Smelting & Refining Company, dated June 2d, 1908, to the W. A. Corder Company, in the amount of \$4,974.31.

Q. That is from the Great Western to the Corder Company? [539—487] A. Yes, sir.

Q. What does that include, what items?

A. That includes, reading from Government's Exhibit Number "31," which is the ledger account of the Great Western Smelting & Refining Company on the W. A. Corder Company's books, page 4, state that \$4,974.31 includes a charge, on page 29, sales sheet 689, one-half zinc plates, Pacific Engineering Company, \$200.28; one-half sale of zinc John Finn Metal Works, \$21.79, total \$222.07. Also a charge on date of March 26, 1908, sales sheet number 723, one-half sales zinc plate to Postal Telegraph, \$10.84.

Q. Without going into these different items, does this book checks \$4,974.31, Plaintiff's Exhibit "23," does that include the balance due to Corder on this zinc and other items? A. Yes, sir.

Q. Putting it that way? A. Yes, sir.

Q. Not necessary to go into the other items. What is the next entry you find on the books concerned with reference to this transaction?

(Testimony of Hiram S. House.)

A. Reading from Government's Exhibit Number "32," which is check number 1978, dated June 1st, 1908, of the W. A. Corder Company, payable to E. Goldberg, in the sum of \$2,109.60.

Q. What is the date of that, now? A. June 1st.

Q. What transaction does that refer to?

A. It is a payment by the W. A. Corder Company to Emar Goldberg on the same day this amount was received from the yard.

Q. Are there any other memorandums there with reference to this same transaction? Trace that through.

A. Reading from Government's Exhibit Number "49," which is a deposit ticket of the National Bank of Commerce, which states [540—488] that a deposit to the account of Emar Goldberg on the 2d of June for \$2,109.60, the same amount as the Corder check.

Q. That is the deposit slip of Emar Goldberg in the National Bank of Commerce? A. Yes, sir.

Q. What memorandum do you next find with reference to this particular transaction?

A. Reading from Government's Exhibit Number "51," which is a copy—the originals were offered in evidence and these copies put in—reading from Government's Exhibit Number "51," which is ledger account of Emar Goldberg in the National Bank of Commerce, shows, on the 2d of June, a debit of \$1,479.60.

Mr. SCHLESINGER.—That, of course, your

(Testimony of Hiram S. House.)

Honor please, is subject to the objection we have heretofore made.

The COURT.—Yes.

Mr. ALLEN.—In other words, this copy of the account of Emar Goldberg with the National Bank of Commerce shows that on June 2d—

A. His account was charged—

Mr. SCHLESINGER.—We object to that on the ground it is immaterial, irrelevant and incompetent, nothing to do with any of the issues involved in this cause.

The COURT.—Objection overruled. Proceed.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—What comparison do you make between that amount which was charged to the account and that of the check referred to here?

Mr. SCHLESINGER.—Same objection, your Honor please.

The COURT.—Same ruling.

Q. It is \$630 less than the check given him by W.

A. Corder Company.

Mr. SCHLESINGER.—Six hundred and how much? A. Thirty dollars. [541—489]

Mr. ALLEN.—That went through Emar Goldberg's personal account?

A. In the National Bank of Commerce, yes, sir.

Q. What reference do you next find in the books concerned with reference to this particular transaction?

A. Reading from Government's Exhibit Number "73," page 9, line 15, under date of June 2d, is a

(Testimony of Hiram S. House.)

credit to the W. A. Corder Company for \$1,479.60.

Mr. SCHLESINGER.—What was that?

Mr. ALLEN.—\$1,479.60. What memorandum do you next find with reference to this transaction?

A. Reading from Government's Exhibit Number "25," page 2, which is the ledger account of the W. A. Corder Company on the Great Western Smelting & Refining Company's books, is a credit, under date of June 2d, 1908, for \$1,479.60 cash.

Mr. SCHLESINGER.—Same objection, if your Honor please, goes to this, of course.

The COURT.—Yes, same ruling.

Mr. ALLEN.—That is a credit, then, upon the books of the Great Western, upon the ledger, a credit to the name of W. A. Corder of \$1,479.60?

A. Yes.

Mr. SCHLESINGER.—Same objection.

The COURT.—Same ruling.

Mr. ALLEN.—And that check is a check which is represented by the personal check of Emar Goldberg?

Mr. SCHLESINGER.—Same objection, if your Honor please.

The COURT.—Yes.

A. Same amount as charged against his bank account on this same day.

Mr. ALLEN.—His personal bank account on this same day. What memorandum do you next find with reference to this transaction?

A. That closes the deal.

(Testimony of Hiram S. House.)

Q. That closes the deal? A. Yes, sir. [542—490]

Q. What was the aggregate amount of the sales of the Great Western Smelting & Refining Company during this year 1908, approximately, Mr. House, what amount of business did they do?

Mr. SCHLESINGER.—Just a minute. So there will be no confusion about this, the objection which I have heretofore made, insistently made, runs to the introduction in evidence of Plaintiff's Exhibit "48" and Plaintiff's Exhibit "47."

The COURT.—I am satisfied those objections were made.

Mr. SCHLESINGER.—Yes, sir; they were made, and the same ruling.

Mr. ALLEN.—They were admitted in evidence.

Q. What reference do you find with regard to an excess delivery over there in the Navy Yard?

A. Government's Exhibit Number "7" states that the bid of the Fowler Metal Company was for 50,000 pounds of zinc. Government's Exhibit Number "27," which is a sales sheet of the Great Western Smelting & Refining Company, page 66, shows that they delivered 59,575 pounds.

Mr. VANDERVEER.—This, your Honor, is nothing but argument, and I object to it upon that ground. Counsel asked the witness to state what one thing shows, then what another thing shows, for the purpose of getting before the jury the argument which results from the comparison of two things. It

(Testimony of Hiram S. House.)

isn't competent for any expert or anybody else to do that.

The COURT.—Let us proceed.

Mr. VANDERVEER.—I would like an exception.

The COURT.—Proceed. Note an exception.

Mr. ALLEN.—Any further reference to that same transaction regarding zinc? A. No, sir.

Q. Mr. House, I again ask you what was the aggregate amount of the business done by the Great Western during this time, this year [543—491] 1908, approximately?

A. Government's Exhibit Number "27," which are the various sales sheets of the Great Western Smelting & Refining Company, from April 1st, 1908, states that from April 1st, 1908, to April 1st, 1909, their total sales amounted to \$168,098.71.

Q. Mr. House, from the investigation of the books of this concern, did you find an account known as an expense account or—yes, I think designated possibly as an expense account, did you find such an account?

A. They have an expense account.

Q. That has been offered in evidence; I forget the number of the sheet; do you recall the number? (Witness produces same.) Calling your attention to Plaintiff's Exhibit Number "22," which is designated, not an expense account, but "Emar Goldberg, bonus account." I will ask you to tell the jury at what time this bonus account of Emar Goldberg came into existence, so far as you can ascertain from the books of this corporation?

A. On April 23d, 1908.

(Testimony of Hiram S. House.)

Q. On April 23d, 1908. What amount do you find passed to the credit of Emar Goldberg, bonus account? A. \$5,000.

Q. \$5,000. Have you been able to place your hand upon any book of the corporation which explains from which source this \$5,000 came? A. No, sir.

Q. Explain to the jury, now, what you ascertained, if anything, with reference to the checks made upon or against this particular \$5,000 bonus account.

A. They are made to Emar Goldberg in most instances without any explanation outside of just "Emar Goldberg, bonus account."

Q. Calling your attention to different charges against that account, the first is a charge of \$30. Any explanation of that [544—492] in the records of the corporation? A. I found none; no, sir.

Q. Did you look for it?

A. I looked for the check.

Q. How are they all made payable, as a matter of fact?

A. Principally to Emar Goldberg. I don't recall any being payable to anybody else.

Q. How about this \$5,000? A. That is the same.

Q. No explanation on the books of the account?

Mr. SCHLESINGER.—No what, Mr. Allen?

Mr. ALLEN.—Is there any explanation on the books of the company, so far as you could ascertain from that item or any similar item?

Mr. SCHLESINGER.—I certainly object to that, because it is calling clearly for his conclusion. He is entitled to give his conclusion, as I understand, upon

(Testimony of Hiram S. House.)

the basis of some specific figures, but he can't go over a large number of books and say the books don't show this and the books don't show that. I don't think that is material at all.

Mr. SCHLESINGER.—Exception.

The COURT.—Exception allowed.

Mr. ALLEN.—I call your attention to check 4862 out of check-book of the Great Western Smelting & Refining Company. Is that a check against the account of Emar Goldberg, bonus account?

A. It so states; yes, sir, \$30.

Q. That is drawn to the Great Western Smelting & Refining Company and drawn to Emar Goldberg?

A. Yes, sir.

Mr. SCHLESINGER.—This is all subject to our objection.

The COURT.—Yes, sir.

Mr. ALLEN.—What is the next check you find there? [545—493] A. 4863.

Q. By whom is that drawn, and to whom?

A. Great Western Smelting & Refining Company, payable to Emar Goldberg. The stub of the check is made to Emar Goldberg, bonus account, for \$500.

Q. Who signed this check in the first instance, whose signature is that?

A. Signed by Emar Goldberg.

Q. Manager, and payable to his personal order?

A. Yes, sir.

Q. Do you find any endorsement on the back with reference to anybody else handling that money?

A. No, sir.

(Testimony of Hiram S. House.)

Q. What is the next item on the bonus account?

A. Government's Exhibit "73," page 1, line 13, under date of May 4, 1908, Emar Goldberg, bonus account, with no explanation, \$160, check No. 4892.

Q. No explanation? A. No, sir.

Q. I will ask you whether or not every other item on that page shows an explanation except that?

Mr. SCHLESINGER.—I object to the question as to no explanation. It is immaterial, incompetent and absolutely irrelevant. The books didn't require any explanation.

The COURT.—Let the witness state what the book shows.

Mr. ALLEN.—That is what he is stating, your Honor, that the books don't show anything with regard to it.

The COURT.—Counsel objects to the words "no explanation" being there.

Mr. ALLEN.—State whether there is in this book any statement there as to the character or purpose of that expenditure. [546—494]

A. There is none.

Mr. SCHLESINGER.—Why, now, the book speaks for itself. Now, your Honor, that is true with reference to a million items in the book and a million items in the books of every merchant, real estate men as well as other people.

Mr. ALLEN.—That whole book is offered in evidence. We offer in evidence the memorandum contained in Plaintiff's Exhibit Number "73" at page 1, line 13 thereof.

(Testimony of Hiram S. House.)

The COURT.—Page 1?

Mr. ALLEN.—Page 1, yes, sir.

The COURT.—Page 6, it was before.

Mr. ALLEN.—Well, we were referring to page 6 before.

The COURT.—Line what? A. 13.

The COURT.—Very well.

Mr. ALLEN.—Calling your attention to the next item, what is the amount and date of that?

A. The amount is \$336, under date of May 18, 1908.

Q. Can you, by reference to the books of the company see if it has any further reference to that amount which was drawn against this excess fund or something?

A. Reading from Government's Exhibit Number "73," page 6, line 20, and under date of May 18th, is an item, "E. Goldberg, bonus account, 356," represented by voucher No. 4951.

Q. What explanation is printed therein with reference to the purpose for which this money was expended?

Mr. SCHLESINGER.—I object to the question—

A. There is none.

Mr. SCHLESINGER.—One moment—on the ground that the item doesn't require explanation, and is calling for a conclusion of the witness.
[547—495]

The COURT.—I would ask you not to use that "explanation."

Mr. ALLEN.—All right. Does that record show anything with reference to the character or purpose

(Testimony of Hiram S. House.)

for which this money was expended which was drawn from Mr. Goldberg's bonus account? A. No, sir.

Q. Take the next item.

A. Under date of May 29, 1908, \$200. Reading from Government's Exhibit Number "73," page 8, line 6, is an entry, under date of May 29, E. Goldberg, bonus account, \$200, voucher number 4964.

Mr. ALLEN.—Mr. House, did Mr. Kettlewell ever have anything to do with these books?

Mr. SCHLESINGER.—I object to that as calling for Mr. House's opinion. He has been on the books eight months himself. He doesn't know what Kettlewell has done.

Mr. ALLEN.—I submit he can answer that question.

The COURT.—Proceed with the examination of the witness.

Mr. SCHLESINGER.—I object to that as immaterial.

Mr. SHIPLEY.—If he knows.

The COURT.—There is nothing in the record he ever had possession of these books. He might—

Mr. ALLEN.—How long have you had actual possession of these books, of the Government's exhibit?

A. Since May, 1911.

Q. Had Mr. Kettlewell ever at any time had access to them?

Mr. SCHLESINGER.—Now, of your own personal knowledge of what you have seen.

Mr. ALLEN.—What you have seen?

A. I have never seen him have them.

(Testimony of Hiram S. House.)

Mr. SCHLESINGER.—I move to strike out the answer as not being responsive. [548—496]

Mr. ALLEN.—Well, as a matter of fact, these books have been kept either in your possession or in the custody of the United States District Attorney's office during all that time, have they not?

Mr. SCHLESINGER.—I object to that as being immaterial.

The COURT.—If he knows he can answer.
swer.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

A. I had these books for eight months, approximately, working on them. I then boxed them up and nailed up the boxes and stored them away, and the boxes are in the same condition as they were when I left them.

Mr. SCHLESINGER.—You had them for eight months?

The COURT.—Proceed.

Mr. ALLEN.—Referring again to this bonus account. What is the next item you find there charged to Mr. Goldberg, bonus account?

A. Didn't I complete this?

The COURT.—Let me ask, how much—

Mr. ALLEN.—Just two or three more of these items, your Honor.

A. There is just two after this one.

Mr. SCHLESINGER.—You said that you personally have had these books for eight months. You

(Testimony of Hiram S. House.)

don't know how long the officials of the Government, including Mr. Bryan, the detective, had them?

A. He didn't have them at all.

Mr. SCHLESINGER.—Don't you know they have been here for two years, since 1911?

A. Yes, they have been.

Mr. SCHLESINGER.—That is all I want to know.

A. Reading from Government's Exhibit Number "73," page 8, line 6, is entry, under date of May 29th, E. Goldberg, bonus account, \$200, voucher No. 4964. [549—497]

Q. What explanation is there on that?

Mr. SCHLESINGER.—Object to the question as to what explanation was given under your Honor's previous ruling.

The COURT.—Yes, that expression, I think,—

Mr. ALLEN.—Well, read the explanation, if there is one, read the explanation there either on the check or the book account which explains the purpose for which this expenditure was made.

Mr. SCHLESINGER.—I do hope your Honor will again caution my good friend not to use the word "explanation" there.

The COURT.—If there is an explanation there he can say so. Proceed.

Mr. ALLEN.—Read the explanation, if there is any, and if there isn't, say so.

A. There isn't any.

The COURT.—What is that?

A. There isn't any.

(Testimony of Hiram S. House.)

The COURT.—You said a while ago that term should not be used under the objection of counsel. They think it prejudices the jury and it should be eliminated. Let the witness state what appears there, if anything. Proceed.

Mr. ALLEN.—Well, suppose I propounded the question the way your Honor just suggested, what answer could he give?

The COURT.—If there is none he could say so.

Mr. ALLEN.—I thought that is just what he said.

The COURT.—It is your question that they object to.

Mr. SCHLESINGER.—Yes, your Honor.

Mr. ALLEN.—That closes that bonus account does it?

A. No, sir, there is two more items, that is, down to the first of June.

Q. Well, what other item, if any, do you find in this bonus account?

A. Reading from Government's Exhibit Number "22," Emar Goldberg, bonus account, the charge on June 1st, cash \$500. Reading from [550—498] Government's Exhibit Number "73," page 9,—

Mr. SCHLESINGER.—What date are you on now, Mr. House?

A. June 1st.

Mr. SCHLESINGER.—We object to any testimony, if your Honor please, subsequent to May 26th, and particularly subsequent to June 1st.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

(Testimony of Hiram S. House.)

The COURT.—Note an exception.

A. Page 9 of Government's Exhibit Number "73," line 4, is an entry under date of June 1st, 1908, E. Goldberg, bonus account, \$500, voucher number 4972.

Mr. SCHLESINGER.—I might possibly ask here whether it is proposed to go over the bonus account up to the present date, because I might state to you, Mr. House,—

The COURT.—Proceed with the inquiry and see what the next question is.

Mr. ALLEN.—Does this bonus account contain any explanation either in any book or ledger of the concern as to the purpose for which this money was expended?

Mr. SCHLESINGER.—Now, if your Honor please, the same objection I heretofore made.

The COURT.—Yes, I have made that suggestion a dozen times not to use the word "explanation." You can use another term that will get the same information and eliminate the objection which has been made.

Mr. ALLEN.—With all due respect to your Honor, this is an expert accountant, and I am asking him to refer to any book, your Honor, they might have.

The COURT.—Ask him.

Mr. ALLEN.—Can you find anything on the books of accounts of the [551—499] Great Western Smelting & Refining Company,—

The COURT.—Any reference.

Mr. ALLEN.—Any reference, then, your Honor,

(Testimony of Hiram S. House.)

to this \$500 item and the purpose for which it was expended? A. I have not been able to.

Q. Any more of those items?

A. There is one more. Government's Exhibit Number "22," Emar Goldberg, bonus account, a charge under June 1st, 1908, cash \$210.

Q. June what, now?

A. June 1st, the same date. Reading from Government's Exhibit Number "73," page 9, line number 5, under date of June 1st, 1908, E. Goldberg, bonus account, \$210, voucher number 4973.

Q. Do you find in any book or account of the Great Western Smelting & Refining Company any reference to the purpose for which this money may have been used or expended? A. I have not.

Q. You have looked, have you, in all cases, you have followed out these checks and these other matters, have you? A. Yes, sir.

Mr. KERR.—As far as you know, it may have been used in settlement of a damage suit in the Superior Court of this county.

The COURT.—Proceed with the examination.

Mr. ALLEN.—Mr. House, have we omitted any material part of this, so far as you know?

A. Not that I know of.

Mr. ALLEN.—Take the witness.

On cross-examination by Mr. SCHLESINGER, said witness testified as follows:

Q. Mr. House, you have testified here concerning probably a dozen or more of folders. To produce these folders before these men [552—500] how

(Testimony of Hiram S. House.)

many folders have you examined, how many thousands of folders?

A. I didn't understand your question.

Q. (Question repeated.)

A. I have examined the same number I have produced here.

Q. Well, haven't you in the adjoining room perhaps three or four thousand of folders concerning the Navy Pay Office transactions?

A. Oh, not that many; no, sir.

Q. How many have you?

A. Well, I don't know; it will just be a guess.

Q. Well, just approximately.

A. I have both the Navy Pay Office folders and also the navy yard folders.

Q. Does that indicate the number to any intelligent man?

A. Well, I want to explain that I have two folders for the same number. I have perhaps four or five hundred folders of different numbers.

Q. Four or five hundred. And you selected these especially for this case, did you not?

A. I went over them, yes, sir.

Q. Did you select them for presentation in this case?

A. Well, Mr. Allen and I together did, yes, sir.

Q. How many months of labor have you actually expended in this investigation?

A. The entire investigation?

Q. Yes, how many months?

(Testimony of Hiram S. House.)

A. Well, counting the time I have put in on trials and investigating, too, perhaps ten or twelve months.

Q. Ten or twelve months. On this case alone, isn't that true, Mr. House?

A. No, sir, not on this case alone. [553—501]

Q. How much of the time have you put in on this particular case? A. Well, I couldn't tell you.

Q. In investigating this matter you examined the McManus folders, did you not? A. Some of them.

Q. About a dozen or more of them?

A. I suppose so.

Q. Did you receive any assistance from Mr. Kettlewell in that examination, yes or no?

A. I talked the matter over with Mr. Kettlewell.

Q. How many consultations, about, have you had with Mr. Kettlewell during your examination of these various accounts?

A. I didn't keep any record of it.

Q. Approximately how many have you had?

A. I couldn't come within—I don't know how many.

Mr. SCHLESINGER.—That is all.

Mr. KERR.—Let me ask the witness one question.

Q. Mr. House, you went through these records yesterday and picked out, identified certain bids for furnishing of zinc plate to the amount of those bids. Did you make any examination in the course of your service in this case for the purpose of ascertaining whether firms like the Seattle Hardware Company had at any time bid, or near the time mentioned in this indictment, for the furnishing of plate?

(Testimony of Hiram S. House.)

A. I did.

Q. You found that they had bid 12 cents a pound for the furnishing of these plates, didn't you?

A. No, sir.

Q. Not once, but on numerous occasions? [554—502] A. No, sir.

Q. Never found where they bid 12 cents?

A. No, sir; they bid ten and a half on 5,000 pounds and Emar Goldberg bid 15 cents on the same requisition.

Q. Without wasting time, I desire to call your attention to Government's Exhibit Number "58" I think it is.

The COURT.—What folder do you call it?

Mr. KERR.—I am not going into this matter further, your Honor, we will take it up in our defense. I call your attention to requisition number 58, series of 1908, and the bids. I will ask you now to turn to the bid of the Great Western Smelting & Refining Company, or to W. A. Corder & Company; these are the two I want to call your attention to.

A. Did you mean bid or award?

Q. I mean b-i-d, bid, I asked you.

A. I thought you meant award.

Q. Just look at that and see if that bid for 3627 pounds of these plates by the Seattle Hardware Company was not exactly 12 cents a pound?

A. Why, sure it wasn't.

Q. You just figure out and tell me how much it lacked? A. It was 12½ cents.

(Testimony of Hiram S. House.)

Q. Well, maybe your figures are right, but I figured 12 cents.

A. The award was let to Mr. Corder, however, Mr. Kerr.

Q. I understand that, but I am asking you the bid of the Seattle Hardware Company.

A. I was referring to the award to the Seattle Hardware Company.

The COURT.—You better have that identified in the record.

Mr. KERR.—We will put them in later, your Honor.

The COURT.—Very well. [555—503]

Mr. KERR.—I will identify the cover, Mr. Allen. Mark this for identification.

(Folder referred to marked Defendants' Exhibit "10.")

Q. Calling your attention, now, to exhibit "66," another bid for another thousand pounds of these plates, 12½ cents, that is right, isn't it?

A. Yes, sir, they bid 12½ cents on September 26th, 1907.

Q. That is number "66."

A. To whom was that award made, Mr. Kerr?

Q. Did they ever furnish any zinc plates to the Government, the Seattle Hardware Company, or Schwabacher Hardware Company, at 12½ cents.

A. Not that I recall. They furnished some at ten and a half.

Q. They furnished some at twelve and a half, too,

(Testimony of Hiram S. House.)

didn't they, the Seattle Hardware?

A. I don't recall that they did.

Q. And they accepted their bid at twelve and a half?

A. I don't remember that they did.

Q. If they did the Government didn't indict them, to your knowledge?

A. I don't understand any of them are under indictment.

Mr. KERR.—That is all.

Mr. SCHLESINGER.—That is all for the present.

On redirect examination by Mr. ALLEN said witness testified as follows:

Q. In this transaction that was awarded to Cor-der, though, wasn't it?

A. The first one was. I don't recall what that one was.

Q. You don't know whether this is the particular instance, as Mr. Kettlewell says, he changed the bid so as to take it away from [556—504] the Seattle Hardware Company?

Mr. SCHLESINGER.—Your Honor, we will object to that. We show change of bid after awhile as part of our case.

Mr. ALLEN.—All right. That is all. [557—505]

[Testimony of **E. Silverstone**, for Plaintiff
(Recalled).]

E. SILVERSTONE, recalled as a witness on behalf of the plaintiff, further testified as follows:

Direct Examination.

(By Mr. ALLEN.)

Q. Mr. Silverstone, you were interrogated yesterday with regard to the deposit of this \$7,400 check in your bank. Since you were here they brought up—this is merely a copy made here, it isn't the original, but you have seen the original, have you?

Mr. SCHLESINGER.—We object to that upon the ground it is not redirect examination.

Mr. ALLEN.—I recalled him.

Mr. SCHLESINGER.—Oh, you call that, as a matter of fact, courtesy?

Mr. ALLEN.—Yes.

Mr. SCHLESINGER.—All right.

Mr. ALLEN.—Do you recall whether or not that is a copy of the original, do you recall whether it was approximately in that shape (showing paper to witness)?

A. I wasn't shown it, but I believe that is.

Q. You believe that is the copy? A. Yes, sir.

Q. That is June 1st, 1908?

A. That is June 1st, 1908.

Q. This is the copy taken from the bank's record of the deposit slip of the same day showing the zinc item, \$7,417.09? A. Yes, sir.

Q. By comparison of dates, do these dates com-

(Testimony of E. Silverstone.)

pare, and is it the same date that you returned to Mr. Goldberg and had him endorse the back of this check? A. It is.

Q. The same day, June 1st, 1908. He had the check in his possession [558—506] at that time, did he? A. Yes, sir.

Mr. SCHLESINGER.—This is subject, your Honor please, to our same objection.

The COURT.—Yes, I so understand. Exception allowed.

Mr. ALLEN.—That is all.

Mr. SCHLESINGER. — No cross-examination.
[559—507]

[Testimony of Ray Spear, for Plaintiff (Recalled).]

RAY SPEAR, recalled as a witness on behalf of the plaintiff, further testified as follows:

Direct Examination.

(By Mr. ALLEN.)

Q. Paymaster Spear, without any intention on my part of being discourteous, it occurs to me I didn't have you state, for the information of the jury, your rank and service in the United States Navy. How long have you been in the Navy?

A. Approximately fifteen years. I have the rank of Lieutenant-Commander.

Q. What is that rank equivalent to in the Army, comparable to?

A. It carries with it the relative rank of Major of the United States Army.

Q. Mr. Spear, I would like to have that exhibit,

(Testimony of Ray Spear.)

which is the letter written by—Mr. House, have you that letter written by Goldberg to Matheson & Heggler people? (Letter produced.) Calling your attention to Plaintiff's Exhibit Number "37," which is a letter from the Great Western Smelting & Refining Company, signed by Emar Goldberg, manager, addressed to the Matheson & Heggler Zinc Company, La Salle, Illinois, in which this statement is made: "There is considerably more zinc than the Government ordered, but the navy yard—this is considerably more zinc than the Government ordered, but the navy yard people here have asked us to carry this in stock on account of the battleship fleet coming here, and for that reason we have today wired you asking for price on another car." That is dated March 16th, 1908. Did you ever advise Mr. Emar Goldberg, or Mr. Corder, Mr. Emar Goldberg, that you wished him to keep this zinc in stock, the fleet was coming here?

A. Personally, no, sir. [560—508]

Mr. SCHLESINGER.—We object to that, if your Honor please, as immaterial, irrelevant and incompetent, and what has that to do with the matter at all?

The COURT.—He may answer.

Mr. SCHLESINGER.—Exception.

A. Personally I recall no such conversation with either one of the gentlemen.

Mr. SCHLESINGER.—That is, you mean on that subject?

A. Yes, sir.

(Testimony of Ray Spear.)

Mr. ALLEN.—You are quite sure that no such conversation took place, are you, Mr. Spear?

A. With me, yes, sir.

Q. Mr. Spear, state to the jury the system which was in vogue, sometimes designated as the “alarm system,” with reference to papers or memorandum that might come to your desk in the course of the day’s business which you found in effect when you went into the Bremerton Navy Yard.

A. I found it a rule of the office, and the practice of the various clerks, including Mr. Meyer as Chief Clerk, that whenever any special subject was laid on my desk, or special letter, or any matter that required my personal consideration, that besides drafting the original letter themselves they would attach to the top of that letter a written brief statement asking me to please read this, or marking it “urgent,” or giving me some reason to pay particular attention to that particular matter; as you know that in a large office a great deal of the work is routine; the blank speaks for itself, just merely requiring signature; but a lot of matters that passed through required a lot of careful consideration before you are willing to put your name on it. [561—509]

Mr. ALLEN.—May it please the Court, for the information of the Court, I want to call your Honor’s attention to section 3722, the Revised Statute, which reads as follows: “The chief of a bureau of the Navy Department, in asking for naval supplies, shall be at liberty—”

Mr. SCHLESINGER.—That is section 3722 of

(Testimony of Ray Spear.)

the Revised Statutes?

Mr. ALLEN.—Yes.

On cross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Now, Mr. Spear, is it not a fact that during the years 1907, 1908 and 1909 and 1910 the total amount of sales of the Great Western Smelting Company, through this Navy Pay Office, did not exceed the total sum of \$22,000, or the rate of about \$5,000 a year?

A. I have never calculated it, and I couldn't speak as to the year 1907 for the reason I wasn't up here.

Q. What would you say as to 1908, 1909 and 1910?

A. That would be merely a matter of curious statistics, Mr. Schlesinger. I have never gone in it at all.

Q. And do you know that during those years it amounted to only about \$15,000, including this transaction in dispute? A. The Seattle Pay Office?

Q. Yes, the Navy Pay Office.

A. They provide us with a very small quantity of our material, comparatively speaking.

Q. And do you not know, Mr. Spear, in that same connection—

Mr. ALLEN.—You say they; you mean the Navy Pay Office?

A. Yes, sir.

Mr. SCHLESINGER.—I am talking of the Navy Pay Office, with which you were connected and with which Mr. Kettlewell was connected? [562—510]

A. I wasn't connected with it, you understand, in any way.

(Testimony of Ray Spear.)

Q. Do you know the total sales of metals through that Navy Pay Office during that same length of time? A. No, sir, I haven't the slightest idea.

Q. Do you not know the amount is nearly \$750,000?

A. I know nothing about it; no sir.

Q. In other words, do you not know that the business of the Great Western Smelting Company was very inconsiderable as compared with the business done there by various other concerns throughout the country? A. Oh, I have no doubt of that.

Q. No doubt. Mr. Spear, you are still in the employ of the Government, are you not? A. Yes, sir.

Q. You have not been discharged for any incompetency? A. No, sir.

Q. And no complaints have been made against you? A. No, sir.

Q. Where are you now stationed, please, Mr. Spear? A. At Norfolk, Virginia.

Mr. SCHLESINGER.—That is all.

On cross-examination by Mr. VANDERVEER said witness testified as follows:

Q. The Government reserves the right to reject at any time any and all bids for material?

A. Before award.

Q. What officer of the Government exercises the discretion to do that?

A. Well, that all depends on circumstances. The Purchasing Pay Officer here in the city could exercise his judgment regarding [563—511] If he were in doubt he would probably send it over to me

(Testimony of Ray Spear.)

at the navy yard. That would have been his practice, for recommendation.

Q. That, in 1910, would be either you or Mr. Orr?

A. Yes, sir. and if I didn't care to pass on it I would send it back to the Navy Department and let them act on it.

Q. Now, I understand the regulations, and rules and orders of the Department, regarding which you were examined at some length, required that the fullest competition be solicited wherever possible?

A. Yes, sir.

Q. Whether the purchase be advertised, or whether it be an open purchase?

A. That doesn't make any difference.

Q. That is true?

A. Yes, that is true regarding all purchases.

Q. And I observed in a number of folders which you were shown, which you identified, that in instances proposals were returned without any bid. That is done, is it not, at the request of the Navy Pay Officer, or of your office?

A. Yes, it is merely to show the firms that we did give the firms the opportunity.

Q. For the purpose of making a record in your office showing that competition was solicited, and that the proposals were sent broadcast to various dealers of metals, or whatever it was you were proposing to purchase? A. Yes, sir.

Q. Whenever that is shown it is immaterial, is it not, Mr. Spear, whether you actually received one, two, three, four or half a dozen bids? A. Yes.

(Testimony of Ray Spear.)

Q. So long as it appears that competition was solicited and the [564—512] proposals were sent to the proper dealers?

A. I will modify that by saying yes, provided that the price obtained from possibly the one bidder is a fair price.

Q. Oh, well—

A. It is entirely discretionary with the Government whether they accept or reject that one bid.

Q. If there were six bidders, and didn't get a fair price from all of them, you might reject them all, which gave that right at all times? A. Yes, sir.

Q. The matter of fairness of price is quite separate and apart from the question I meant to ask you.

A. I see your point.

Q. Regarding the number of bidders, it is immaterial whether there is one, two, three or four, whenever it appears the proposals were sent to the proper dealers and proper competition solicited?

A. Yes, sir, that is correct.

Q. So that in the case which we have been considering, I think you had been in the courtroom part of the time, Mr. Spear, it is immaterial whether Mr. Goldberg bid alone, whether Mr. Corder bid with him, or whether other people bid or did not bid, so long as it appeared that the proposals were sent to these people and the other people to whom they should properly be sent? A. Yes, sir.

Mr. MORRIS.—That is all.

Mr. ALLEN.—That is all, Mr. Spear. [565—513]

**[Testimony of J. A. Kettlewell, for Plaintiff
(Recalled).]**

J. A. KETTLEWELL, recalled as a witness on behalf of the plaintiff, further testified as follows:

Direct Examination.

(By Mr. ALLEN.)

Q. I just wanted to ask you one more question, and I think the matter wasn't as explicit as I would have liked. In the case of requisition 438, which is requisition for 50,000 pounds of zinc plate, started on its way April 1st, 1908, and in which the proposals were sent out or taken around on April 11th of the same month, and thereafter the award made on April 15th of the same month, I want to ask you whether there was any advertisement made in the case of that particular—

Mr. SCHLESINGER.—I object to that upon the ground the record is the best evidence and not the recollection of this witness.

The COURT.—He may answer if he knows.

Mr. SCHLESINGER.—The record shows there wasn't any, it was dispensed with by the Secretary of the Navy. Our objection is, it is a matter of inquiry not in dispute. The Secretary of the Navy waived the necessity of an advertisement.

Mr. ALLEN.—If there is no objection to it you may answer the question.

Mr. SCHLESINGER.—The testimony won't help the matter any.

The COURT.—He may answer, if he knows.

(Testimony of J. A. Kettlewell.)

Mr. SCHLESINGER.—Exception.

A. The bids were advertised; some of them were sent out in the usual manner or advertising, through the local office.

Mr. ALLEN.—But there was no publication in the papers?

A. Not public in the papers, no sir.

Mr. ALLEN.—That is all.

Mr. SCHLESINGER.—No questions. [566—514]

Mr. ALLEN.—We now offer again, the record, I think, is clear, but we now offer again, your Honor, in evidence all of those exhibits which have been identified and which are now not properly admitted in evidence, if there are any, and reserving at this time to read—

Mr. RIDDELL.—That stipulation was that Mr. House might make out a schedule showing what the exhibit shows, and Mr. House was busy with Mr. Schlesinger last night showing him papers all evening, and Mr. Schlesinger has very kindly consented with me to put it in Monday.

Mr. SCHLESINGER.—That is, subject to my examination.

Mr. RIDDELL.—Oh, certainly.

Mr. ALLEN.—But our records shall be kept open for that purpose?

Mr. SCHLESINGER.—For that purpose, certainly.

Mr. ALLEN.—That your Honor, covers the matter of the sales of zinc by these concerns during the

month, I think, of April, was it not, and for the month which preceded, which Mr. House was to summarize in one plain sheet?

Mr. SCHLESINGER.—That is subject, of course, to our objection to the materiality.

The COURT.—A summary of the various exhibits?

Mr. ALLEN.—No, your Honor, it was a tabulated statement of the sales made by Corder and Goldberg, as shown by their books, to establish the matter of price.

The COURT.—I mean the exhibits which have been read to the jury.

Mr. ALLEN.—Well, it includes others which have not been read as regards this matter of price, as shown by their books, and counsel has consented—

The COURT.—It is all based upon exhibits which are before the Court now?

Mr. ALLEN.—No, it includes some which are not before the Court. [567—515]

Mr. RIDDELL.—It includes some not actually received in evidence, but read yesterday.

The COURT.—It must be evidence that is before the Court so the jury may have access to this same evidence for the purpose of verifying the tabulated statement.

Mr. ALLEN.—So we will understand each other, these are prices shown in the sales by Corder & Company and by the Great Western Company to various individuals for the purpose of establishing a price during this period.

The COURT.—I understand your purpose. What are you going to base it on?

Mr. SCHLESINGER.—I was about to say, they were submitted to be in the form of a statement properly made out on Monday morning, and we will waive the formality—

The COURT.—I want to know now, do I understand the Government's testimony connects, then, with this?

Mr. SCHLESINGER.—Our objection will only go to the materiality of the evidence offered.

The COURT.—Well, all right. I want to be clear whether there is any objection to any items being included in this statement which is not disclosed by some exhibit which is before the Court now?

Mr. SCHLESINGER.—Well, I understand they will be here in the form of exhibits, will they not, Mr. House, so that question will not arise.

The COURT.—That is what I want to know. I think we ought to limit it, unless they are confined to exhibits before the Court, so the jury can verify this statement. This is for the purpose of assisting the jury.

Mr. SCHLESINGER.—We will want the basic documents themselves. [568—516]

Mr. RIDDELL.—Yes, they are all in evidence.

The COURT.—I want all these exhibits before the Court, which are identified as exhibits and presented in testimony.

Mr. ALLEN.—With our record held open for that purpose, your Honor, why, the Government will rest at this time.

(WHEREUPON PLAINTIFF RESTED ITS CASE IN CHIEF.)

By the COURT.—Some suggestion was made yesterday, I think, as to some argument that you desired to present.

Mr. SCHLESINGER.—Yes, sir.

The COURT.—And how long would you expect to take in that?

Mr. SCHLESINGER.—I think about one hour, your Honor, or perhaps less than that.

The COURT.—Then, with the understanding the Government rests now with this just one thing of presenting a tabulated statement, we will not hold court this afternoon.

Mr. VANDERVEER.—I would like to be heard briefly on a motion. I would like to know by Monday whether I have any further interest in the case. I think I could present my motion in a very few minutes for Mr. Corder.

The COURT.—Very well, I will take that up now.
(Usual caution to jury.)

(Jury withdrawn.)

Mr. VANDERVEER.—My motion, your Honor, is a motion to dismiss this case as to the defendant W. A. Corder, or a challenge to the [569—517] sufficiency of the evidence. The defendant Corder is accused of having conspired with two men in the Government employ. He is not accused of having conspired with Mr. Goldberg and even if it appeared here by any evidence that he had conspired with Mr. Goldberg that evidence would not sustain this indictment.

The COURT.—The Government resists the motion?

Mr. ALLEN.—Certainly.

The COURT.—I don't think the Court would be justified at this time to say that there isn't sufficient evidence at this stage of the proceeding to receive further consideration by the Court or jury. Without going into any analysis of the testimony as I understand it to the application of the law, as I feel, must be given to the jury. At this time, at least, the motion ought to be denied. It might be that a further development of this trial might place the matter differently before it reaches the jury, but at this stage of the proceeding I don't think so. Court stands adjourned until ten o'clock Monday morning. [570—518]

Mr. ALLEN.—The Government is now prepared and is ready to furnish that statement or compilation, which, in the record the other day it reserved the right to offer in evidence, this compilation of the sales made by Mr. House and we now offer that in evidence at this time.

The COURT.—Any objection?

Mr. ALLEN.—Mr. House, that is correct, is it, that compilation?

Mr. HOUSE.—Yes, sir.

Mr. SHIPLEY.—That is the compilation we stipulated about?

Mr. ALLEN.—Yes, sir.

Mr. SCHLESINGER.—That is a compilation of the evidence that has already been submitted?

Mr. RIDDELL.—That is a compilation of the

evidence that has already been submitted, yes, sir.

Mr. VANDERVEER.—Unless the rejections are shown we will object to it being offered in evidence, otherwise it would be misleading. It would seem to indicate, without the rejections shown, that the amounts delivered were always accepted. It isn't a fact.

Mr. ALLEN.—In answer to Mr. Vanderveer's suggestion, this was originally only intended as a synopsis, as it were, of a schedule of prices—

Mr. MORRIS.—We can't hear.

Mr. ALLEN.—I was suggesting to the Court this was designed merely for a schedule of prices shown by the books of the two defendants, and Mr. House has not included that. It was not with any wish on our part to include it as a matter of record. If you have, Mr. Vanderveer, anything to add to it as a memorandum of record we have no objection.

Mr. VANDERVEER.—You have all our books, Mr. Allen. We haven't seen them for several years. That ought to be made up correctly to show the amounts delivered; it doesn't; it shows them incorrectly. [571—519]

Mr. RIDDELL.—I think it does. You wanted to show Goldberg's rejections as well as Corder's.

Mr. VANDERVEER.—Of course, I am not concerned with Mr. Goldberg.

Mr. RIDDELL.—Just make a little circle around here (showing).

Mr. SCHLESINGER.—Your Honor, we are also to introduce in evidence certain illustrative charts, and by account of Mr. Riddell and Mr. Allen, upon

that understanding we have no objections to this going in by way of illustration of their theory.

The COURT.—This, as I understand, is based upon evidence before the jury.

Mr. SCHLESINGER.—Simply to illustrate the theory of the Government, and we will have one to illustrate the theory of the defense ourselves.

The COURT.—I simply want counsel on both sides to understand these compilations must be based all upon evidence that goes before the jury. This is for the purpose of assisting the jury in finding what the evidence actually is.

Mr. KERR.—We don't, of course, consent that represents all of the issues which are essential for this jury to know. We haven't any objection to the Government introducing this.

The COURT.—I simply want anything and everything that goes in the statement to be based upon the evidence which is before the jury.

Mr. SCHLESINGER.—I haven't, your Honor please, examined this, but I assume that this simply contains items already in evidence.

The COURT.—Yes, that is my understanding.

Mr. SCHLESINGER.—Is that a fact, Mr. House?

Mr. HOUSE.—The way I understand it, yes, sir.

The COURT.—I wouldn't want to effect a rule which would allow the parties to put in a statement of what the books show without the books being in evidence. [572—520]

Mr. SCHLESINGER.—I was going to say, your Honor, it seems to me we ought to check up the

items appearing on this chart and see whether they do cover items in evidence.

The COURT.—Mr. House testified they do.

Mr. HOUSE.—They are in these books.

Mr. SCHLESINGER.—The point is, did you make up this chart from matters solely admitted in evidence?

Mr. HOUSE.—The books have been admitted in evidence.

Mr. SCHLESINGER.—Not all of the books have been admitted in evidence. Only certain pages of those books have been admitted in evidence.

Mr. KERR.—I think your Honor ought to give us an opportunity to examine it.

The COURT.—Both sides understand the position of the Court. This is simply for the purpose of enabling the jury to find the evidence as it actually exists, and it is not evidence itself.

Mr. ALLEN.—The compilation?

The COURT.—Yes, that is the idea, and I simply want the compilation based upon the evidence.

Mr. ALLEN.—If the Court please, to supplement this, there are in the hands now of Mr. Meyer about five or six of these folders—

Mr. MORRIS.—Just wait and let us examine these and we will be through in just a moment.

Mr. ALLEN.—May it please the Court, now I have here, your Honor, five folders, one requisition number 76, another number 58, and another number 399, another 154, another requisition number 153, and also requisition 444, just handed me by Mr. House. These requisitions, your Honor, are the

only requisitions which were not, I believe, formally introduced in evidence to which this chart refers. They were referred to by Mr. House and Mr. [573—521] Riddell in their examination, but not actually received in evidence, and I now offer these in evidence to supplement this chart so if the jury wish to refer from this chart to these folders they may do so.

Mr. SCHLESINGER.—No objection.

The COURT.—What are those numbers?

Mr. ALLEN.—Requisition number 76 of series of 1908.

(Folder referred to received in evidence and marked Plaintiff's Exhibit "74.")

Mr. ALLEN.—Requisition number 58, series 1908.

(Folder referred to received in evidence and marked Plaintiff's Exhibit "75.")

Mr. ALLEN.—Requisition number 399 of the series of 1908.

(Folder referred to received in evidence and marked Plaintiff's Exhibit "76.")

Mr. ALLEN.—Requisition number 154 of the series of 1908.

(Folder referred to received in evidence and marked Plaintiff's Exhibit "77.")

Mr. ALLEN.—Requisition number 154 of the series of 1908.

(Folder referred to received in evidence and marked Plaintiff's Exhibit "78.")

Mr. ALLEN.—Requisition number 444, that is of the series of 1908.

(Folder referred to received in evidence and

marked Plaintiff's Exhibit "79.")

The COURT.—They will all be admitted.

Mr. ALLEN.—The sheets now offered in evidence will be exhibit number "80." [574—522]

The COURT.—Now, that is the—

Mr. ALLEN.—That is a sheet, a compilation, as it were.

The COURT.—How many sheets are there?

Mr. ALLEN.—There are two sheets here.

The COURT.—Pin them together. Admitted.

(Papers referred to received in evidence and marked Plaintiff's Exhibit "80.")

Mr. ALLEN.—Mr. House has just added the rejected objection referred to by Mr. Vanderveer.

The COURT.—Proceed.

Mr. SCHLESINGER.—Your Honor, we have certain motions to make. Will your Honor excuse the jury whilst they are being made?

(Usual caution to jury.)

(Jury withdrawn.)

Mr. SCHLESINGER.—Your Honor please, defendants at this time move to strike all evidence, whether oral or documentary, of acts occurring subsequent to May 26th, 1908, upon the ground that the alleged conspiracy here terminated here, as shown by the undisputed evidence of the Government, on the 26th day of May, 1908.

The defendants also move to dismiss the indictment and for peremptory instruction of acquittal, upon the ground that no overt act is either alleged in the indictment or shown by the evidence to have been committed within three years next preceding

the filing of the indictment.

Mr. SCHLESINGER.—In order to have the record straight, may I supplement the motion to strike out by specifying each particular check itself at some future time? [575—523]

The COURT.—Oh, yes, it is immaterial, because the motion goes to all of the testimony introduced subject to within a certain time.

Mr. SCHLESINGER.—Yes, sir, subsequent to the 26th of May.

Mr. SCHLESINGER.—Your Honor denies both motions?

The COURT.—Yes, sir.

Mr. SCHLESINGER.—Exception.

(Jury recalled.)

(Usual caution to jury.) [576—524]

OPENING STATEMENT ON BEHALF OF THE DEFENDANTS BY MR. SHIPLEY.

Mr. SPIRK.—May it please the Court, before the testimony is gone into I desire to call the Court's attention to this transcript of the record which purports to be a tabulation of the sales sheets and other documents introduced by the Government. It has been difficult to make a perfect examination in so short a time. I notice, in examining the various proposals in the folders, that the time stated in those proposals does not appear upon this tabulation, and the jury might draw the inference from this, without reference to the enclosures in the folders, these amounts which were bid by the various individuals were upon the same forms as the bid of the Great Western Smelting & Refining Company and W. A.

Corder Company. A little notation up here (showing). I submit to the Court that ought to be shown opposite each item clearly and distinctly so that the jury may understand, by going over this tabulated statement, what the difference in the bids was.

Mr. RIDDELL.—It does.

Mr. SPIRK.—Just a mere notation under the caption.

The COURT.—You gentlemen went over that several times.

Mr. SCHLESINGER.—Your Honor, I want to say now, in view of the apparent position that has been taken here by the Government, that I will not consent to this chart being put in evidence until I have had a chance to check it up with these various folders, and I have had no opportunity as yet.

The COURT.—Just what is your objection, Mr. Spirk?

Mr. SPIRK.—My objection, your Honor, is simply this: I have no objection if your Honor thinks that one not an accountant and [577—525] familiar with the Government's records can take that tabulated statement, and appreciate the difference in the items of these respective bids and respective of delivery in order that that comparison may be made on price bid on this particular delivery.

Mr. RIDDELL.—How can it be made more fair for you?

Mr. SPIRK.—I just submitted it to the Court.

The COURT.—Now, I think that after counsel get through with the argument here and present their various theories in relation to this I would be able

to produce an intelligent result, produced with the aid of the papers and the exhibits, and the jury is just as intelligent with relation to that as I am.

Mr. SPIRK.—I say, if, by examination of that, in light of counsel's explanation, that can be understood I have no objection to it. All I want is the jury may have these references so they can see the distinguishing—

The COURT.—Mr. Schlesinger, is there anything further in your mind now than has been conceded here?

Mr. SCHLESINGER.—I simply want the statement of Mr. Allen that only embraces the items testified to by Mr. House.

The COURT.—I will say this, that this is admitted upon the theory that it contains only reference to testimony which is included in exhibits before the court and jury now.

Mr. SCHLESINGER.—And your Honor will so instruct the jury?

The COURT.—Why, certainly.

Mr. SCHLESINGER.—If that is so we are satisfied.

Mr. SHIPLEY.—Our understanding is this is a mere capitulation from the evidence before the jury.

The COURT.—Yes, simply an index.

Mr. RIDDELL.—It may seem rather captious, but some of it wasn't really read by Mr. House; some I read.

The COURT.—But it is included from the evidence so that counsel [578—526] and jury know?

(Testimony of Hiram S. House.)

Mr. RIDDELL.—Yes, it is included.

The COURT.—Proceed.

[**Testimony of Hiram S. House, for Defendants.**]

HIRAM S. HOUSE, called as a witness on behalf of the defendants, being previously sworn, testified as follows:

Direct Examination.

(By Mr. MORRIS.)

My full name is Hiram S. House. I am the same Mr. House who was offered as a witness and testified on behalf of the Government in the Government case in chief. I obtained the requisition or folder from the Navy Pay Office in Seattle, and it has been in my possession all the time since I secured it; that is requisition number 179, series of 1911. This is a folder containing requisition number 179, dated April 15th, 1911, asking for 500 feet of two inch rubber hose for flexible tubing.

Mr. MORRIS.—Now, your Honor, we desire to have said folder identified exhibit “O.”

(Folder referred to marked Defendants’ Identification “O.”)

This other folder is the yard folder for requisition number 153-L, series of 1910, dated February 5th, 1910, asking for 3100 pounds of bolts and nuts of various sizes. I telephoned to the navy yard for this for Mr. Meyer just two or three days ago. It came through the mail. I did not examine it when it came over—I just gave it to him. There is papers in there that should be there, [579—527] and

(Testimony of Hiram S. House.)

there are no papers there that should not be there that I know of.

Mr. MORRIS.—Now, your Honor please, we would like to have this folder number 153-L marked for identification.

(Folder referred to marked Defendants' Identification "I.")

The folder that my attention is now directed is yard folder for contract number 146. It came into my possession a few days ago. I received it from the navy yard. I did not look into the folder when it came. I got it from Mr. Meyer. I see nothing irregular in it at the present time. It appears to contain the papers that should be in it. The date is November 9th, 1910.

Mr. MORRIS.—We desire at this time to have said folder marked for identification.

(Folder referred to marked Defendants' Identification "Q.")

The folder I now hold in my hand is yard folder for contract number 10,058. The folder came from the navy yard at Bremerton. I had this folder for quite a while. I got it along in April or May, 1911. It has been in my possession ever since that time. It was delivered into my possession by someone connected with the navy yard. It is a storekeeper's folder. It is in the same condition it was when it was delivered to me. I let Mr. Meyer have it this morning, in this Court. I did not put any particular mark on these particular papers. It looks as though it might be in the same condition now that it was

(Testimony of Hiram S. House.)

when I turned it over to the defendant Meyer. It is dated October 27th, 1909.

Mr. MORRIS.—We desire to have said folder marked for identification.

(Folder referred to marked Defendants' Identification "R.")

Mr. MORRIS.—Is it your pleasure to make the examination suggested [580—528] by the learned gentleman representing the Government?

A. It makes no difference to me.

Mr. SCHLESINGER. — Did Mr. Kettlewell handle all these things here to-day, Mr. House?

A. No, sir.

Q. Sure of that?

A. They have been in the courtroom all the time.

Mr. MORRIS.—Again directing your attention to a folder (handing same to witness), kindly examine same. State to the Court and jury what the paper is you now hold in your possession.

A. This is the yard folder for contract number 13,704 with the Western Hardware & Metal Company, dated September 12th, 1910.

The COURT.—13,074?

A. 13,704.

The COURT.—Dated—

A. September 12, 1910.

Mr. MORRIS.—From where did you secure said folder?

A. Navy yard at Bremerton.

Q. When? A. Just a few days ago.

Q. Is it in the same condition at this time it was

(Testimony of Hiram S. House.)

at the time it was received by you at the navy yard?

A. Apparently so.

Q. Did it come from the Storekeeper's Department of the navy yard?

A. Yes, sir, I telephoned for it for Mr. Meyer. I didn't telephone for these, either, I sent a memorandum over asking them to send them over.

Q. Yes, sir. Now, we desire at this time to have said folder marked for identification, your Honor, defendants' identified exhibit "S."

(Folder referred to marked Defendants' Exhibit "S" for identification.) [581—529]

Q. Mr. House, again directing your attention to a folder, kindly examine same (handing same to witness). Are you familiar with the folder which you now hold in your hand?

A. I never looked inside of it before, I don't believe.

Q. From where did you secure said folder?

A. From the navy yard at Bremerton.

Q. When? A. Just a few days ago.

Q. Is it in the same condition now that it was when you received it from the navy yard?

A. Apparently so.

Q. And you delivered that folder to Mr. Meyer?

A. This morning, yes, sir.

Q. This morning here in the courtroom?

A. Well, I guess it was since lunch time.

Q. Since lunch time, yes.

The COURT.—What is that?

A. It is the yard folder for contract number 12,529

(Testimony of Hiram S. House.)

with Richard B. Sherman, dated January 10, 1910.

Mr. MORRIS.—We would like to have said folder identified.

(Folder referred to marked Defendants' Identification "T.")

Q. Mr. House, again directing your attention to a folder (handing same to witness), kindly examine same and state to the Court what it is, if you know.

A. This is the yard folder for contract number O-8188, contract with Richard B. Sherman, dated January 11, 1910.

Q. When did said folder come into your possession? A. Just a few days ago.

Q. And you secured it from where?

A. Navy Yard at Bremerton. [582—530]

Q. And has it been in your possession ever since you secured it from the navy yard at Bremerton?

A. Until I brought it in Court here this afternoon.

Q. This afternoon. And you then delivered it to the defendant Meyer? A. Yes, sir.

Q. Is said folder in the same condition at the present time that it was in when you received it from the navy yard at Bremerton? A. Apparently so.

Mr. MORRIS.—We would like to have said folder marked for identification, your Honor please.

(Folder referred to marked Defendants' Identification "U.")

Q. Mr. House, I again direct your attention to a number of sheets fastened together with a red ribbon (handing same to witness). Will you kindly examine same? Do you know what that bunch of

(Testimony of Hiram S. House.)

papers represent? A. Yes, sir.

Q. Have they been in your possession previous to this time? A. Yes, sir.

Q. From where did you secure them?

A. Navy yard.

Q. At Bremerton? A. Yes, sir.

Q. When? A. About two weeks ago.

Q. Are they now in the same condition as they were when you secured them two weeks ago from the Navy Yard at Bremerton?

A. I don't notice any change.

Q. Have they been in your possession ever since you secured them from the Navy Yard at Bremerton?
[583—531]

A. Until to-day, yes, sir.

Q. And to-day in whose possession—to whom did you deliver them? A. Mr. Meyer.

Q. Mr. Meyer. Now will you kindly state to the Court and jury what those papers are.

A. This is a requisition from the United States ship "Washington" for supplies.

Q. United States ship "Washington"?

A. Dated June 14, 1908.

Q. They are what is known as ship's requisition, is it? A. Yes, sir.

COURT.—June, 1908?

A. June 14, 1908.

Mr. ALLEN.—What number was it, Mr. House?

A. 75, ship's requisition number 75.

Mr. MORRIS.—I understood you to state 75 is the ship's number?

(Testimony of Hiram S. House.)

A. Yes, sir.

Q. Not a serial number?

A. No, it is a ship's number.

Mr. SHIPLEY.—Not a storekeeper's number, in other words?

A. No.

Mr. MORRIS.—At this time, your Honor, we would like to have said bunch of papers identified.

(Papers referred to marked Defendants' Identification "V.")

Q. (Mr. HOUSE.) I again direct your attention to a folder (handing same to witness). Kindly examine same. Are you familiar with that folder?

A. Yes, sir.

Q. State to the Court and jury what it is.

A. This is a folder that came from the navy yard at Bremerton, [584—532] contains a ship's requisition for the United States ship "Washington" number 47, dated January 21, 1908.

Q. When did you secure said folder?

A. About two weeks ago.

Q. From where did you secure it?

A. Navy Yard at Bremerton.

Q. It has been in your possession ever since you secured it from the navy yard at Bremerton?

A. Until this afternoon.

Q. And this afternoon you delivered it to Mr. Meyer? A. Yes, sir.

Q. Is it now in the same condition that it was at the time you received it from the navy yard at Bremerton? A. Apparently so.

(Testimony of Hiram S. House.)

Q. And in the same condition it was when you delivered it to Mr. Meyer? A. Apparently so.

Mr. MORRIS.—We offer this folder for identification, your Honor.

(Folder referred to marked Defendants' Identification "W.")

Q. Mr. House, I again direct your attention to a card attached to four sheets of paper (handing same to witness). Kindly examine said card and state to the Court and jury what it is, if you know.

A. This is a ship's requisition made by the United States ship "Colorado"—

Q. Are you referring to the sheets of paper or the card?

A. Which do you want me to refer to? I was referring to the whole requisition.

Q. Directing your attention especially to the card. Read my question. (Question repeated.) The card, now, is the particular [585—533] subject.

A. All I know about these cards is just what I have been told.

Q. Well, tell the jury what it is, then. Get it that way.

A. The card attached is a card that is made out in the general storekeeper's office when a ship's requisition is received, and it shows the—

Q. Let me ask you a question right here. That is, you mean that that card is received, that is the ship's requisition for supplies, and then this card starts in to perform its duty? A. Yes, sir.

Q. The requisition first must originate, though,

(Testimony of Hiram S. House.)

with the ship? A. Yes, sir.

Q. All right, go on.

A. And this card, the way I understand it, shows the date on which the material requisitioned for is delivered.

Q. Has that card a number? A. Yes, sir.

Q. What is the number?

A. It is the record order number 694.

Q. Record order 694. Any other number?

A. Yes, sir.

Q. Give the other number.

A. It says "U. S. S. Colorado No. 30."

Q. All right, proceed. Anything else on the card?

A. Want me to read the entire card?

Q. No. That is all?

A. That is all the numbers.

Q. Now, directing your attention to the four sheets of paper attached to said card, kindly state what those are.

A. The first sheet is a ship's requisition from the U. S. ship "Colorado" No. 30, dated April 24th, 1908.

Q. Are the succeeding sheets attached to the card and the first sheet [586—534] part of the first sheet? A. They are fastened together.

Q. Yes. I say, they all relate to the same transaction?

A. The second and third sheets are what are known as store invoices.

Q. But they are relating to the subject matter, the requisition? A. Yes, sir.

Q. This card being part of this transaction, may it

(Testimony of Hiram S. House.)

please your Honor, I suppose it will be the pleasure of the Court to have it identified as one exhibit?

The COURT.—I think it would be better to have it identified together.

Mr. MORRIS.—Just whatever the Court suggests. You see, it is fastened together (showing).

The COURT.—This card might be “X” and the other “XX.”

Mr. MORRIS.—All right. At the Court’s suggestion, the card will be identified “X,” and the four sheets to which said card is attached to be identified as “XX.”

(Papers referred to marked defendants’ “X” and “XX” for identification, respectively.)

Q. Mr. House, I again direct your attention to a card attached to two small sheets and four larger sheets of paper (handing same to witness). Kindly examine those papers and state to the Court and jury what the card is, if you know, giving its number and any other description matter contained thereon.

A. This is a card that was attached at the navy yard to—

Q. Better give the number of the card, probably, first? A. It is store order number 685.

Q. Any other number?

A. It is attached to requisition U. S. ship “St. Louis” No. 60.

Q. Does the requisition to which said card is attached bear a number? [587—535] A. Yes, sir.

Q. Kindly state the number to the Court and jury.

A. This is ship’s requisition No. 60 for the U. S.

(Testimony of Hiram S. House.)

ship "St. Louis," dated April 27, 1908.

Q. Mr. House, from where did you secure said papers? A. Navy Yard at Bremerton.

Q. When? A. About two weeks ago.

Q. They have been in your possession ever since?

A. Until to-day, yes, sir.

Q. Are they now in the same condition they were at the time you received them from the Puget Sound Navy Yard? A. Apparently.

Q. Sir? A. Apparently so, yes, sir.

Mr. MORRIS.—We would like to have said card and sheets of paper identified.

(Papers referred to marked defendants' identification "Y.")

Q. (Mr. HOUSE.) I again direct your attention to numerous papers to which are attached two cards (handing same to witness.) I wish you would examine the first card and state to the jury what it is, if you can? A. This is store order Number 620.

The COURT.—Store order?

A. Yes, sir; it is record order, or store order.

The COURT.—620?

A. 620. It is attached to the ship's requisition No. 1 of the U. S. ship "Kearsarge," dated March 20th, 1908.

The COURT.—What date?

A. March 20th, 1908. [588—536]

Mr. MORRIS.—And those two cards and the papers attached thereto relate to the same subject matter, do they? A. Yes, sir.

Q. When did you secure said papers?

(Testimony of Hiram S. House.)

A. About two weeks ago.

Q. From where did you secure them?

A. Navy Yard of Bremerton.

Q. Is that previous to the beginning of this trial?

A. Yes.

Q. That you secured them? A. Yes, sir.

Q. They have been in your possession ever since, have they? A. Until to-day, yes, sir.

Q. And you delivered them to Mr. Meyer in the courtroom to-day? A. Yes, sir.

Q. At his request, I presume? A. Yes, sir.

Q. And are said papers in the same condition at the present time that they were in when you received them from the Puget Sound Navy Yard?

A. Apparently so.

Mr. MORRIS.—I would like to have these two cards and the papers attached thereto identified.

(Papers referred to marked defendants' identification "Z.")

Q. Mr. House, again directing your attention to a card and two sheets of paper (handing same to witness). Kindly examine the card and state to the Court and jury what the card is.

A. The card is record order No. 1019. It is attached to ship's requisition No. 9 of the U. S. ship "Kearsarge," dated June 8th, 1908. [589—537]

Q. And you secured said card and papers attached thereto from where? A. Navy yard, Bremerton.

Q. When? A. About two weeks ago.

Q. Previous to the beginning of this trial?

A. Yes, sir.

(Testimony of Hiram S. House.)

Q. And have they been in your possession ever since? A. Until to-day, yes, sir.

Q. You delivered them to Mr. Meyer at his request? A. Yes, sir.

Q. And they are now in the same condition that they were when you received them from the Puget Sound Navy Yard, are they?

A. Apparently so, yes, sir.

Mr. MORRIS.—We would like to have that identified.

(Papers referred to marked defendants' identification "A-1.")

Q. Mr. House, I again direct your attention to a card attached to which are several sheets of paper, small, larger and still larger (handing same to witness). Examine that card and state to the jury what it is.

A. This is store order No. 287 attached to ship's requisition No. 28 of the United States ship "Pennsylvania."

The COURT.—Number what?

A. No. 28 of the U. S. ship "Pennsylvania," dated February 26th, 1908.

Mr. MORRIS.—And from what source did you secure said papers?

A. From the navy yard at Bremerton.

Q. When? A. About two weeks ago.

Q. Have they been in your possession ever since?

A. Yes, sir. [590—538]

Q. Did you deliver them to the defendant to-day?

A. Yes, sir.

(Testimony of Hiram S. House.)

Q. At his request? A. Yes, sir.

Q. Are they now in the same condition they were when you received them from the navy yard at Bremerton? A. Apparently so, yes, sir.

Mr. MORRIS.—This will be defendants' "A-2," for identification.

(Papers referred to marked defendants' "A-2" for identification.)

The COURT.—How many papers are there, Mr. Morris? Are there a good many papers or files?

Mr. MORRIS.—No, we will finish by five o'clock, your Honor, with this. That is what I was trying to do, rush it through. Mr. Meyer, we have no others here now to be identified?

Mr. MEYER.—No, sir.

Mr. MORRIS.—Are there any papers which you now hold in your hand that have been in your possession less than two weeks, or that you secured subsequent to the beginning of this trial?

A. No, sir.

Mr. MORRIS.—Then we can stipulate at the present time that the record show that each and all of the papers which the witness now has in his hand to be identified has been in his possession and secured from the Navy Storekeeper's office at Bremerton, and they are in the same condition now as they were at the time you received them from the Storekeeper?

Mr. ALLEN.—So far as the knowledge of Mr. House goes, that is true.

Mr. MORRIS.—That is not the question. If you are going to stipulate let us stipulate.

(Testimony of Hiram S. House.)

The COURT.—Now, then, take these papers and identify them in the record. [591—539]

Mr. MORRIS.—Now, Mr. House, you will be compelled to take the first paper which you hold there, examine same, and see if it is in the same condition at the present time it was when you received it, from the Government, from the Storekeeper's office at the Puget Sound Navy Yard?

A. Is it in the same condition?

Mr. MORRIS.—It is in the same condition?

A. Apparently so, yes sir.

Mr. MORRIS.—And, as far as that department is concerned, we can enter into the stipulation that I just mentioned.

The COURT.—Now, so we can get it in the record, supposing the paper you have in your hand now will be known as exhibit "A-3," then there will be no question about it.

Mr. MORRIS.—All right.

A. "A-3." You want me to read the record number?

Q. You better give it to the Court.

A. Record No. 951. It is a U. S. "Rhode Island" requisition.

(Papers referred to marked defendants' identification "A-3.")

The COURT.—Now, the next one is "A-4," and hand it to him.

(Papers referred to marked defendants' identification "A-4.")

Mr. MORRIS.—Mr. House, directing your atten-

(Testimony of Hiram S. House.)

tion to Defendants' Exhibit "A-4" for identification, I want you to examine said card and the papers attached thereto, and state to the Court and jury when you received same (handing same to witness).

A. About two weeks ago.

Q. From where did you receive them?

A. Navy yard, Bremerton.

Q. Are they now in the same condition they were when you received them from the navy yard at Bremerton? [592—540]

A. I believe they are, yes, sir.

Q. That is all right. Kindly state what is shown upon the face of said card as to number?

A. It is record order No. 134, the requisition of the U. S. ship "St. Louis."

Q. Requisition number and date?

A. No. 1, dated July 22d, 1908.

Q. Again directing your attention to Defendants' Exhibit "A-5" for identification, same being a card to which are attached several sheets of paper (handing same to witness). Are you familiar with said card and papers thereto attached? A. Yes, sir.

Q. When did you secure said card and papers?

A. About two weeks ago.

Q. From where? A. Navy yard at Bremerton.

Q. Is that card and those papers in the same condition they were at the time you received them from the navy yard at Bremerton?

A. I believe them to be, yes, sir.

Q. Now, give the number on the card.

A. It is record order No. 29 attached to—requisi-

(Testimony of Hiram S. House.)

tion for the U. S. ship "Charleston," dated July 3d, 1908.

Q. Again directing your attention to Defendants' Exhibit "A-6," for identification, same being a card attached to which are several sheets of paper (handing same to witness). Are you able to state from where you received such card and said papers?

A. Yes, sir.

Q. From where? A. Navy yard at Bremerton.

Q. When?

A. About two weeks ago. [593—541]

Q. Previous to the date of this trial?

A. Yes, sir.

Q. Is that card and those papers in the same condition at the present time they were at the time you received them from the navy yard?

A. I believe them to be, yes, sir.

Q. Directing your attention to said card, will you kindly give the Court and jury the number?

A. This is store order No. 544, attached to the requisition of the U. S. ship "California," dated April 16, 1908.

The COURT.—April 16, 1908? A. Yes, sir.

Mr. MORRIS.—Again directing your attention to Defendants' Exhibit "A-7" for identification same being a card attached to numerous sheets of paper (handing same to witness). Are you familiar with said papers? A. Yes, sir.

Q. When did you secure them?

A. About two weeks ago.

Q. From what source did they come?

(Testimony of Hiram S. House.)

A. Navy yard, Bremerton.

Q. Are they now in the same condition they were when you received them from the navy yard at Bremerton? A. I believe them to be, yes, sir.

Q. Directing your attention to the card, kindly state the number thereon.

A. Record order No. 436, attached to requisition of the U. S. ship "Milwaukee," dated October 1st, 1908.

Q. Again directing your attention to Defendants' Exhibit "A-8" for identification, same being a card and several sheets of paper attached, are you familiar with said papers? A. Yes, sir. [594—542]

Q. When did they first come into your possession?

A. About two weeks ago.

Q. From what source did you receive them?

A. Navy yard, Bremerton.

Q. Are they now in the same condition they were when they were received by you from the navy yard at Bremerton? A. I think they are.

Q. Kindly state the card number.

A. Record order No. 1094.

Q. Any other designation?

A. Attached to requisition of the U. S. ship "Tennessee," dated May 26th, 1908.

Q. Again calling your attention to card and sheets of paper attached thereto (handing same to witness).

The COURT.—For the record, that is "A-9."

A. "A-9," yes, sir.

Mr. MORRIS.—Are you familiar with said papers, defendants' identification "A-9"?

A. Yes, sir.

(Testimony of Hiram S. House.)

Q. Are you familiar with said papers?

A. Yes, sir.

Q. Where did you secure them?

A. Navy yard at Bremerton.

Q. When? A. About two weeks ago.

Q. Are they now in the same condition as when you received them from the navy yard?

A. I believe them to be. [595—543]

Q. State the number on said card, will you, please?

A. Record order 966.

Q. Record 966?

A. Attached to the requisition of the ship "New Jersey."

Q. Number of requisition?

A. Dated March 9, 1908. That what you want?

Q. Yes, sir. Again directing your attention to Defendants' Exhibit "A-10" for identification (handing same to witness), kindly examine that bunch of papers. Are you familiar with them?

A. Yes, sir.

Q. From where did you receive them?

A. Navy yard at Bremerton.

Q. When? A. About two weeks ago.

Q. Two weeks ago? A. Yes, sir.

Q. Are they now in the same condition as they were when you received them from the navy yard at Bremerton? A. I believe they are.

Q. State to the Court and jury what that identified exhibit shows.

A. This is requisition number 8 of the U. S. ship "St. Louis," dated September 22d, 1908.

(Testimony of Hiram S. House.)

Q. These papers relate only to the requisition for the "St. Louis"? A. Yes, sir.

Q. I again direct your attention to Defendants' Exhibit "A-11" for identification (handing same to witness), same being a card attached to one sheet of paper. Are you familiar with said exhibit?

A. Yes, sir.

Q. When did it come into your possession?

A. About two weeks ago. [596—544]

Q. Is it now in the same condition it was at the time you received it two weeks ago?

A. I believe it is.

Q. From what source did you receive same?

A. Navy yard at Bremerton.

Q. State the number on said card, will you please?

A. It is record order No. 1022. It is attached to requisition from the ship U. S. "New Jersey."

Q. And the number of the requisition?

A. Requisition No. 41, dated June 8th, 1908.

Q. And again directing your attention to Defendants' Exhibit "A-12" for identification, one sheet of paper (handing same to witness). Examine same. Are you able to state to the jury from what source you received said paper? A. Yes, sir.

Q. From where? A. Navy yard at Bremerton.

Q. When? A. In April or May of 1911.

Q. It has been in your possession ever since?

A. Yes.

Q. It is now in the same condition it was when you received it from the navy yard in May, 1911?

A. Yes, sir.

(Testimony of Hiram S. House.)

Q. Has it been in your possession all of said time since you received it from the navy yard?

A. It has been in the safe of the United States Attorney for a while.

Q. And it was taken out of the safe of the United States District Attorney at whose request?

A. I took it out at my own request. Mr. Meyer asked me to bring [597—545] it here.

Q. Mr. Meyer asked you to bring it into court?

A. Yes, sir.

Q. And you got it from the District Attorney's safe? A. Yes, sir.

Q. And it is now in the same condition it was when you delivered it to Mr. Meyer? A. Yes, sir.

The COURT.—What do you call that sheet?

A. That is a stock ledger sheet for boiler zinc.

Mr. MORRIS.—I think that is all we will try to do to-night, Mr. Schlesinger, if you have no objection.

Mr. SCHLESINGER.—Not at all, Mr. Morris.
[598—546]

TUESDAY AFTERNOON SESSION.

November 4th, 1913, 2 o'clock P. M.

Mr. MORRIS.—At this time, your Honor, I would like the indulgence of Court and counsel for the Government. We have taken what we consider the precaution in procuring the attendance of three witnesses for the defendant Meyer at this time, and while Mr. Meyer's defense is not going to be introduced first, we would like at this time, if the Court would consent, a lady and two gentlemen, a lady

(Testimony of W. Walls.)

from Bremerton and two business men in the city, their evidence to be taken in behalf of defendant Meyer at this time. You have no objection to that, have you, Mr. Allen?

Mr. ALLEN.—I can't think of any possible objection, your Honor.

The COURT.—Very well.

[Testimony of W. Walls, for Defendant.]

W. WALLS, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MORRIS.)

My full name is William Walls. I have lived in Seattle since 1905. I am a ship carpenter. I am acquainted with the defendant Meyer. I have known him for seven years. I was acquainted with him during the year 1907. I occupied the property of Mr. Meyer. The first of October I rented a house of Mr. Meyer. I lived in it for two years. It is at 107 21st Avenue North. I paid the rent to Mr. Meyer himself. I moved into the house on the first of October, 1907, and remained until October, [599—547] 1909. I have my receipts.

Q. Will you kindly produce same?

A. Sure thing. (Witness produces same.) Those are the rent receipts I paid Mr. Meyer during that period. I identify them all. I hold in my possession receipts for the rent of the house which I rented from Mr. Meyer from the first of October,

(Testimony of W. Walls.)

1907, to June, 1908. Those six receipts were given to me by the defendant, Meyer, at the time I made my monthly payments. I rented the house the first of October, 1907, and Mr. Meyer has not been in there only just once a month for rent—that is all. At the time I rented the house from Mr. Meyer he had moved out a week before that.

The COURT.—Do you want to identify those receipts?

Mr. MORRIS.—I would offer them in evidence, but I understand the District Attorney makes no contest of it.

The COURT.—Stand aside.

Mr. ALLEN.—That is all. [600—548]

[Testimony of L. A. Cook, for Defendants.]

L. A. COOK, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MORRIS.)

My name is L. A. Cook. I live at the present time in Bremerton, Washington, and have lived there off and on for the last eleven years. I am a stenographer at present in the Puget Sound Navy Yard, and have been employed there about eight years altogether. I have been connected with the Storekeeper's department of the Puget Sound Navy Yard and was connected part of the time in said department at the time the defendant Meyer was connected with the Storekeeper's Department of said navy yard. Mr. Meyer was Chief Clerk at that

(Testimony of L. A. Cook.)

time, and I was Public Bill Clerk, I think. I was a subordinate clerk under this man.

Q. And that relationship existed between you and the defendant Meyer for how long at the Puget Sound Navy Yard?

A. Well, I think he was Chief Clerk there for—I think I served under him for a year or a year and a half.

Q. During the years of 1907 and 1908 did you own any real property in Bremerton?

A. I did, yes, sir, 248 Sixth Street, Bremerton.

Q. What was the number of the house?

A. 248.

Q. 248 Sixth Street. At the time you owned this property were you acquainted with the neighbors, your immediate neighbors to either side of the property?

A. I was, yes, sir.

Q. Did you know at that time a lady by the name of Mrs. Florence Green? [601—549]

A. Mrs. Flora Green?

Q. Mrs. Flora Green.

A. Yes, sir, that is the name.

Q. Was she a neighbor of yours?

A. Yes, sir, the next door.

Q. Her house was in the next yard to yours?

A. Yes, sir.

Q. Directing your attention especially to the months of October, November and December, and subsequent months, or October, November and December of 1907, did you occupy your house?

A. No, sir.

(Testimony of L. A. Cook.)

Q. Or was that house rented to some one?

A. It was rented to Mr. Meyer.

Q. To Mr. Meyer? A. Yes, sir.

Q. When you speak of Meyer you mean E. F. Meyer, the defendant in this action? A. I do.

Q. State to this jury when Mr. Meyer rented the property in question from you.

A. It was along in September that I found I was going east, and I wanted to rent my house, and Mr. Meyer offered to rent it from me, and he did rent it, paying rent from October the 1st, 1907.

Q. Until what time?

A. Well, either the first of March or the first of April, 1908. I am not sure whether it was the first of March or the first of April.

Q. And during the time that Mr. Meyer was occupying the premises in question were you in Bremerton, or had you left Bremerton?

A. I had left Bremerton.

Q. And did you receive from Mr. Meyer any remittance in payment of [602—550] rent?

A. I did, every month.

Mr. ALLEN.—We will admit he paid his rent. There is no question about that.

Mr. MORRIS.—We will save time by proving it.

Q. And when you rented the property to Mr. Meyer was it furnished or unfurnished?

A. It was furnished.

Mr. MORRIS.—That is all. [603—551]

[Testimony of Mrs. Flora Green, for Defendants.]

Mrs. FLORA GREEN, produced as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MORRIS.)

My name is Mrs. Flora Green, and I reside at the present time at 252 Sixth Street, Bremerton. It is next door to Mr. Cook's property, the gentleman who was just here on the witness-stand, and I have lived there since 1902. I have a speaking acquaintance with Mr. and Mrs. Meyer. I became acquainted with them in the fall of 1907. They moved into Mr. Cook's house in the fall of 1907. I became acquainted somewhat with Mrs. Meyer. She was sick that winter, and I used to run in occasionally. She was sick in mid-winter, I think in December. She gave birth to her son. At the time Mr. and Mrs. Meyer moved into Mr. Cook's property they had a little girl, I think.

On cross-examination by Mr. ALLEN, the witness testified as follows:

I don't know the day when this baby was born. I was not in the house. He was born some time in December, 1907.

On redirect examination the said witness testified as follows:

I called upon Mrs. Meyer several times after the birth of this child.

Mr. SHIPLEY.—If the Court please, there are a number of exhibits that were introduced as defend-

(Testimony of Hiram S. House.)

ants' exhibits in the former trial, 2,042, which we would like an order for withdrawal of, and we will have an order prepared and kept by the clerk. [604—552]

The COURT.—You may withdraw them. Have you prepared an order?

Mr. SHIPLEY.—No, I haven't prepared an order.

The COURT.—Have you checked them up, Mr. Clerk?

The CLERK.—No, I haven't.

Mr. SHIPLEY.—Mr. House went over them with us this morning, and they are all Government files, your Honor, and they will be returned into the custody of Mr. House.

**[Testimony of Hiram S. House, for Defendants
(Recalled).]**

HIRAM S. HOUSE, recalled on behalf of the defendants, for continued direct examination.

(By Mr. SHIPLEY.)

Q. Mr. House, handing you a Government folder bearing the letter "O" on the back, which was an exhibit in the former trial, I will ask you to state what that is, please.

A. This is the yard folder for requisition No. 490, series of 1908, the requisition being for lead and ochre and venetian red.

Mr. ALLEN.—Mr. Shipley, might I ask you how many of those you want to identify?

Mr. SHIPLEY.—I think there is about a half dozen, just the bunch that Mr. Morris has in his hand.

Q. This is one of the files that has remained in

(Testimony of Hiram S. House.)

the custody of the clerk since the former trial?

A. Yes, sir.

Mr. SHIPLEY.—We would ask to have this marked for identification, if the Court please.

(Folder referred to marked Defendants' Exhibit "A-13" for identification.)

Q. Mr. House, I hand you a folder bearing the mark, the letter "M," [605—553] as an exhibit on the former trial, and ask you to identify that.

A. This is a yard folder for requisition number 426, dated March the 30th, 1908, asking for the purchase of venetian red, sugar of lead, and vermilion.

Mr. SHIPLEY.—We would ask to have that identified as an exhibit in this case.

(Papers referred to marked Defendants' Exhibit "A-14" for identification.)

Q. Handing you a folder stamped with the letter "L" on the back of it, I will ask you what that is?

A. This is a yard folder for requisition No. 400, series of 1908, dated March 17, 1908, asking for the purchase of 4,000 packages of toilet paper.

Q. That is one of the exhibits that has been in the custody of the clerk since the former trial?

A. Yes, sir.

Mr. SHIPLEY.—We would like to have that marked for identification.

(Folder referred to marked Defendants' Exhibit "A-15" for identification.)

Q. Handing the witness another folder marked Defendants' Exhibit "J," I will ask you, please, to identify that.

(Testimony of Hiram S. House.)

A. This is a yard folder for requisition number 335, series of 1908, dated February 25th, 1908, asking for the purchase of turpentine, and bolts and nuts.

Q. That is also one of the exhibits that has been in the clerk's office, is it not, Mr. House?

A. Yes, sir.

Mr. SHIPLEY.—I will offer that for identification.

(Folder referred to marked Defendants' Exhibit "A-16" for identification.)

Q. Handing the witness a folder marked Defendants' Exhibit "K," I [606—554] would like you to state, Mr. House, what that folder is, the folder and its contents.

A. This is yard folder number 391, series of 1908, dated March 16th, 1908, asking for the purchase of turpentine.

Mr. SHIPLEY.—We would ask that be marked for identification.

(Folder referred to marked Defendants' Exhibit "A-17" for identification.)

Q. Handing the witness folder marked Defendants' Exhibit "I," I believe that is all, kindly state what that is, Mr. House.

A. This is yard folder number 315, series 1908, dated February 12th, 1908, asking for the purchase of 3,000 packages of toilet paper.

Mr. SHIPLEY.—We would ask this be marked for identification.

(Folder referred to marked Defendants' Exhibit "A-18" for identification.)

(Testimony of Hiram S. House.)

Q. Mr. House, handing you a package of documents or letters marked Defendants' Exhibit "R," I will ask you, if you can, to state to the jury whether or not that is one of the exhibits that has been with these other papers identified as exhibits that were offered in the other trial. You have examined these exhibits in the clerk's office before going on the stand, have you not?

A. Well, I have forgotten where these things come from. This was an exhibit in the other case.

Q. Well, they were among this package of papers, were they not? A. Yes.

Q. That were examined in the clerk's office this forenoon?

A. Yes. Yes, this was an exhibit in the former trial.

Mr. SHIPLEY.—We would ask to have that marked for identification.

(Papers referred to marked Defendants' Exhibit "A-19" for identification.)

Q. Mr. House, showing you a letter or paper, copy of a letter marked [607—555] Defendants' Exhibit "W," I will ask if you can state that that was one of the papers that was included in this bundle of exhibits in the clerk's office which we examined?

A. Yes, sir, it is.

Mr. SHIPLEY.—We would ask to have this marked for identification.

Mr. ALLEN.—What is it?

Mr. SHIPLEY.—It is one of the exhibits on file, a copy of a letter signed "E. B. Rogers, Paymaster

(Testimony of Hiram S. House.)

General, U. S. Navy," dated January 2d, 1909.

(Papers referred to marked Defendants' Exhibit "A-20" for identification.)

Q. Mr. House, were there some more folders that were brought in that Mr. Meyer referred to this morning? Mr. House, handing you a package of papers attached with ship's requisition for U. S. ship "California," I would ask you to examine that and state, if you can, what it is and where it came from?

A. This is ship's requisition No. 14 of the U. S. ship "California," dated November 22d, 1907, for various items.

Q. When did that come into your custody, Mr. House, please? A. This morning.

Q. And from where?

A. Came through the mail from the navy yard at Bremerton.

Q. It is one of the records of the General Storekeeper's office at Bremerton.

A. I never saw it over there, I am sure it is, though.

Q. That is where you obtained it from?

A. Yes, sir; I telephoned Mr. Barnes for it.

Q. And Mr. Barnes is the Chief Clerk?

A. Yes, sir.

Mr. SHIPLEY.—We will ask to have this marked for identification. [608—556]

(Papers referred to marked Defendants' Exhibit "A-21" for identification.)

Q. Mr. House, will you kindly examine this folder and state what it is?

(Testimony of Hiram S. House.)

A. This is record order number 244 of the files of the Navy Yard at Bremerton, contains ship's requisition number 6 from the U. S. ship "Buffalo," dated December 14, 1907.

Mr. SHIPLEY.—We would ask to have that marked for identification, if the Court please.

(Folder referred to marked Defendants' Exhibit "A-22" for identification.)

Q. Mr. House, I hand you a folder and ask you to examine it and state what it is.

A. This is a yard folder for contract number 12,816, contract with the Central Metal & Supply Company, dated March 7, 1910.

Q. You received this, and the last preceding folder just previously marked, when?

A. Well, I got the last one this morning and I got this one perhaps two weeks ago.

Q. Well, they came from the general Storekeeper's office, Bremerton Navy Yard?

A. That is where I sent for them, yes, sir.

The COURT.—What contract is that?

A. 12,816.

Mr. SHIPLEY.—You have had this in your custody for two weeks, about? A. Yes, sir.

Q. Same condition in which you received it?

A. I guess so; yes, sir.

Mr. SHIPLEY.—We would ask to have that marked for identification.

(Folder referred to marked Defendants' Exhibit "A-23" for identification.) [609—557]

Q. Mr. House, handing you another folder, state,

(Testimony of Hiram S. House.)

please, what that is and when you received it.

A. This is the Navy Pay Office folder for requisition number 170-L, series of 1910. It is dated February 25th, 1910, and calls for several different items.

Q. Items from the Navy Pay Office in Seattle?

A. Yes, sir.

Q. And when did you receive it, please?

A. Why, I have had this for quite a while.

Q. About how long?

A. Oh, perhaps a couple of years.

Q. Since sometime in the spring of 1911?

A. I believe so, yes, sir.

Q. And it has been in your custody with the other Government folders that you have testified to previously? A. Yes, sir.

Q. This folder is in the same condition that it was practically, so far as the contents of the papers are concerned? A. Yes, sir, I believe so.

Mr. SHIPLEY.—We would ask to have it marked for identification, please.

(Folder referred to marked Defendants' Exhibit "A-24" for identification.)

Q. Mr. House, kindly examine this folder and state what it is and when you received it.

A. This is the yard folder for requisition number 170-L, series of 1910, containing a requisition dated February 25th, 1910. This is a yard folder for the one that was identified just a minute before.

Q. And you received that when? [610—558]

(Testimony of Hiram S. House.)

A. About the same time as the other one, about two years ago.

Q. It is still in the same condition it was originally when you received it? A. Apparently so, yes, sir.

Mr. SHIPLEY.—We would ask to have that marked for identification.

(Folder referred to marked Defendants' Exhibit "A-25" for identification.)

Mr. SHIPLEY.—I think that is all at the present time. [611—559]

[Testimony of E. S. Fowler, for Defendants.]

E. S. FOWLER, produced as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. SCHLESINGER.)

My full name is E. S. Fowler. I live in Oakland, California. I have been in Seattle once before; that was two years ago.

Q. What was the occasion of your being here two years ago?

A. I was before the Grand Jury. I was here in this courtroom yesterday afternoon. I expected to be called at two o'clock. I was called before the Federal Grand Jury on behalf of the Government, and have been subpoenaed to attend in this particular matter. I testified before the Federal Grand Jury at that time. I am here at the request of Mr. Goldberg. He telegraphed me to attend. I have heard of a concern called the Fowler Metal Com-

(Testimony of E. S. Fowler.)

pany. Between September 26th, 1907, and March 16th, 1909, said concern has transacted business between those dates in San Francisco. It dealt in new and old metals. Its place of business was at 624 Brannan Street, San Francisco, California.

Q. I will call your attention to a number of checks bearing the caption "Fowler Metal Company, 824-26-28, Brannan Street," and I will ask you whether or not you recognize these checks as the checks used in the ordinary course of business by that concern?

A. Yes, sir.

Mr. SCHLESINGER.—We will, if your Honor please, offer these checks in evidence, so much thereof as refer to the Fowler Metal Company, between the dates I have indicated. Of course, the other part of the transactions have nothing to do with any of these issues.

The COURT.—The checks will be marked for identification "A-26." [612—560]

Mr. ALLEN.—Your Honor, there is only about two-thirds of them that seems to be checks without any possible connection to any facts of any kind bearing upon this particular case. Checks drawn under the name of E. S. Fowler, printed "Fowler Metal Company," and payable to all kinds of people, and in every instance nearly they are after every material fact in this case in point of time.

Mr. SCHLESINGER.—Well, if that be your objection we will offer the check of January 5, 1908, No. 244; we will offer the check of May 26th, 1908, No. 561; we will offer the check dated May 27, 1908,

(Testimony of E. S. Fowler.)

No. 565; we will offer the check No. 566, and bearing date May 27, 1908; we will offer check No. 284, bearing date January 27, 1908; we—

The COURT.—I think they can be admitted. It is for the purpose, I take it, of corroborating the statement of this witness it is a going concern?

Mr. SCHLESINGER.—That is all, your Honor, and for that purpose only. Gentlemen, I will ask you to look at the caption of these checks and not the body (exhibiting checks to witness).

Mr. SCHLESINGER.—Mr. Fowler, do you know a gentleman, likewise an existent person, named A. Alper? A. I do.

Q. And did this concern have anything to do with the Great Western Smelting & Refining Company?

A. You mean the Fowler Metal Company?

Q. Yes. A. Yes, sir, it did.

Q. Were you transacting business with that concern, with the Great Western Smelting & Refining Company? A. Yes, sir. [613—561]

Q. And conferring with them from time to time as to business transactions? A. Yes, sir.

Mr. ALLEN.—Now, your Honor, I assume that is not proper cross-examination. Let this man state what was done.

The COURT.—Let the witness state what the facts are. Proceed.

Mr. SCHLESINGER.—Well, you said that you do know a Mr. A. Alper? A. Yes, sir.

Q. Directing your attention to a period of time, sometime in the year 1908, did you have any con-

(Testimony of E. S. Fowler.)

versation with Mr. Alper with respect to the use by him of the name Fowler Metal Company in any transactions in Seattle, yes or no? A. I did.

Mr. ALLEN.—I object to that for the reason it is incompetent, immaterial and irrelevant, what conversation he may have had with any person connected with the Great Western Smelting & Refining Company, except this man Goldberg. This man Goldberg was the man who is transacting the business here in Seattle. If he had any conversation with him, or any direct authority under which Goldberg was acting, let him produce it here, but for him to come here and attempt to recite a conversation between Mr. Alper or any one of the million and a half people who live in the State of California, I submit it is impossible for the Government here, or any other time, to disprove any assertion he makes, and it is improper direct examination.

Mr. SCHLESINGER.—Why, you know what his evidence is, you had it before the Grand Jury; he is our witness.

Mr. RIDDELL.—No, we don't.

Mr. SCHLESINGER.—You had him before the Grand Jury; your indictment shows it.

The COURT.—I want you, gentlemen, to understand you are to conduct [614—562] yourselves as lawyers here, and if not I will punish you. It is not proper to make a statement of that kind. Now, this trial is going to be conducted orderly. Read the question. (Question repeated.) No, I think the objection should be sustained. You can direct

(Testimony of E. S. Fowler.)

his attention to whether he had any direct information to this order.

Mr. SCHLESINGER.—That is what I intend to lead up to.

The COURT.—Ask him whether he had.

Mr. SCHLESINGER.—Then the objection would have come as the question is leading.

The COURT.—The Court has ruled on that.

Mr. SCHLESINGER.—We take an exception, if the Court please.

The COURT.—Noted.

Mr. SCHLESINGER.—Mr. Fowler, I will ask you this question: In the year 1908, in the early part of that year, did you have any conversation with A. Alper of the Great Western Smelting & Refining Company as to your permitting the name of the Fowler Metal Company to be used with respect to any transaction in Seattle?

Mr. ALLEN.—Same objection, your Honor.

Mr. SCHLESINGER.—I might state to your Honor a word—I don't want to suggest to the witness an answer—that I intend to show a communicated authority. That certainly bears upon the question of intent, and that is the purpose of this question.

The COURT.—You mean Mr. Goldberg?

Mr. SCHLESINGER.—Absolutely. I shall show a prior conversation between Alper and Goldberg relating to this.

The COURT.—Let him answer the question.

(Testimony of E. S. Fowler.)

A. Mr. Alper—

Mr. ALLEN.—Your Honor, at this time— [615—
563]

Mr. SCHLESINGER.—Now, if your Honor please, I certainly object, after the Court has ruled against the prosecution, for Mr. Allen to renew his objection. We don't do it and he ought not do it.

The COURT.—I don't know what he is going to do.

Mr. SCHLESINGER.—There is nothing pending before the court.

Mr. ALLEN.—This is, in substance, the same identical question that was asked before. There is nothing before the Court at this time which shows that Mr. Alper has any connection of any kind whatsoever with any concern in the world. You are merely relying upon a statement of counsel in regard to that. I don't know Mr. Alper.

Q. Now, Mr. Allen, counsel has stated the purpose to show this was a communication communicated to Mr. Goldberg, and the Court has ruled upon that, and after the Court has ruled upon the matter, the matter is disposed of; and the reason I sustained the objection on the former question was because it was simply a question that might end anywhere, but if this is authority they expect to connect with Mr. Goldberg, it is admissible.

Mr. SCHLESINGER.—Read the question.

Q. (Question repeated.) Your answer was?

A. Yes.

Q. Will you state just as tersely and as briefly as

(Testimony of E. S. Fowler.)

you can what that conversation was?

A. Mr. Alper came to my office and, after some conversation in regard to matters connected with the business, said that he might use my name in connection with some bid, with the signing of a bid or check, I don't recall which, or whether it was both, and I replied, "Certainly, Chief, any way you wish to use it you are at perfect liberty." That is all.

Q. Did he ask you at that time whether you could permit that name to be used in that way? [616—564] A. Yes, sir.

The COURT.—Now, my purpose wasn't to permit this conversation between Mr. Alper and this defendant. That question already has been answered as to the authority to communicate to Mr. Goldberg.

Mr. SCHLESINGER.—To what matter did Mr. Alper in that conversation refer?

A. Well, I didn't know at the time what it would be, but I know now it was this matter of the stuff that was sold to the Government.

Q. Talk louder, please. A. It refers to this—

Mr. ALLEN.—Just a moment. I object to that unless the witness, your Honor, can state of his own knowledge.

The COURT.—I think that is right.

Mr. SCHLESINGER.—That is proper. You understand, Mr. Fowler, there are certain technical rules of law we all have to observe, and so please bear in mind and simply state what you know of your own knowledge, so far as you can recollect.

A. You mean since that time?

(Testimony of E. S. Fowler.)

Q. This occurred five years ago, I understand. What else did he say to you, if anything, upon that subject? A. Nothing further than that.

Q. Were you under a salary at that time with the Great Western Smelting & Refining Company?

A. Yes, sir.

Q. And after you had given authority to Mr. Alper, as you have testified, the conversation ended?

A. Yes, sir.

Q. By the way, have you been subpoenaed by the Government to attend [617—565] this trial since your appearance before the Grand Jury?

A. No, sir.

Mr. SCHLESINGER.—That is all.

On cross-examination by Mr. ALLEN said witness testified as follows:

Q. Mr. Fowler, this conversation which you just testified to between yourself and Alper was a query directed to you about five years ago, was it not?

A. No, it was 1908,—yes, that would be about five years ago.

Q. About five years ago? A. Yes, sir.

Q. This matter of the existence of the Fowler Metal Company with reference to any business transacted in Seattle was next called to your attention by some emissary of the United States Government along in the year 1910, was it not, Mr. Fowler?

Mr. SCHLESINGER.—I object to that upon the ground the name of emissary is not stated, nor is a sufficiently definite time stated.

(Testimony of E. S. Fowler.)

The COURT.—Let him answer.

Mr. SCHLESINGER.—Take an exception.

The COURT.—Noted.

Mr. ALLEN.—Read the question.

(Question repeated.)

A. Oh, I think there was something said about it; I don't just recall.

Q. Well, so as to get it definitely before your mind, do you recall an instance of some man coming to see you in the month of May, 1911, with reference to the Fowler Metal Company and any business connections it might have in the city of Seattle?

Mr. SCHLESINGER.—I object to that as not being proper cross-examination and not having been inquired into by the witness on direct. [618—566]

The COURT.—Overruled. Answer the question.

Mr. SCHLESINGER.—Exception.

The COURT.—Noted.

Mr. ALLEN.—You understand the question, Mr. Fowler? A. Yes, shall I answer the question?

Q. Yes. A. No, I didn't understand it.

(Question repeated.)

A. I was called upon several times by representatives of the Government. I don't recall just exactly—

Mr. ALLEN.—You were called upon several times by representatives of the Government, is that true, Mr. Fowler? A. Yes, sir.

Mr. SCHLESINGER.—Object upon the ground the question has been asked and answered.

(Testimony of E. S. Fowler.)

The COURT.—Proceed. Exception.

Mr. ALLEN.—Directing your attention now to a particular time and date, do you recall a visit of a man by the name of Bryan to your office on the 11th day of May, 1911, with reference to this particular Fowler Metal Company and any business it may have transacted in the city of Seattle?

Mr. SCHLESINGER.—Was that before he was subpoenaed to the Grand Jury?

Mr. ALLEN.—Yes, as a matter of fact, it was.

Mr. SCHLESINGER.—I have no objection to that.

A. I don't recall the names of any of those men.

Mr. ALLEN.—Do you recall a tall man with a mustache? A. Yes.

Q. A man probably as tall as I am? [619—567]

A. Yes, he was the first man to call on me.

Q. He was the first man to call on you?

A. Yes, I recall him.

Q. And at that time he directed to you certain inquiries about the Fowler Metal Company and any business connection it might have in the city of Seattle, did he not? A. Yes, sir.

Q. At that time I believe you were engaged in the real estate business? A. Yes, sir.

Q. And, in a way, you were handling some of Mr. Alper's business at that time, weren't you?

A. No, sir.

Q. You were not? A. No, sir.

Q. Didn't you so state to him, as a matter of fact?

(Testimony of E. S. Fowler.)

Mr. SCHLESINGER.—I object to that as not being proper cross-examination, no inquiry having been made on direct.

The COURT.—Proceed. Exception.

Mr. ALLEN.—Did you or did you not, on the 11th day of May, 1911, in the city of San Francisco, in answer to a query propounded to you by this man Bryan, who came to see you in your own office, or elsewhere, in the city of San Francisco, and there asked you whether or not there was any possible connection between the Fowler Metal Company, with which you had been connected, and the Great Western Smelting & Refining Company, and you at that time answered that there was not and never had been?

Mr. SCHLESINGER.—I object to that as not being proper cross-examination.

Mr. ALLEN.—Or that in substance. [620—568]

Mr. SCHLESINGER.—I object to that as not being proper cross-examination, not inquired of on matters in chief, and what he said would be absolutely immaterial.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

The COURT.—Note an exception.

Mr. ALLEN.—Read the question.

Q. (Question repeated.) San Francisco or Oakland?
A. Yes, Mr. Bryan—

Mr. SCHLESINGER.—Now, if your Honor please,—

(Testimony of E. S. Fowler.)

Mr. ALLEN.—Answer the question, did you or did you not?

Mr. SCHLESINGER.—One moment. In defiance of the Court's ruling you have in this courtroom now a detective, so-called. We ask he not be in this courtroom.

Mr. ALLEN.—Mr. Bryan, stand up. (Mr. Bryan thereupon arose.) You recognize this as the man who came to see you? A. Yes, sir.

Q. All right. That is all, Mr. Bryan. (Mr. Bryan leaves the courtroom.) Now, you can answer the question. A. Yes, Mr. Bryan came to see me.

Mr. SCHLESINGER.—A little louder, Mr. Fowler.

A. Mr. Bryan came to see me and asked me if I was connected, or had been connected, with the Great Western Smelting & Refining Company as the Fowler Metal Company? I replied no.

Mr. ALLEN.—I didn't get the first part of that answer.

Mr. SCHLESINGER.—I move to strike out the answer of the witness as not being responsive. Mr. Bryan was asking him as to his connection on the very date of his visit. His evidence referred to 1908. Of course he wasn't connected in business in 1911 or 1910. [621—569]

Mr. ALLEN.—My question was "or had been" and he answered no.

Mr. ALLEN.—You may answer now that on that occasion you told Mr. Bryan that there was no connection, is that true? A. Yes, sir.

(Testimony of E. S. Fowler.)

Q. After that time, then, after that time you came to the city of Seattle, did you not, and appeared before the Grand Jury here? A. Yes, sir.

Q. You met a lawyer by the name of Hutson in this city, didn't you, on that occasion?

A. Yes, sir.

Q. You had several conversations with Mr. Hutson, didn't you? A. Yes, sir.

Q. Also again with Mr. Bryan here in the city?

A. Yes, sir.

Q. And that was about the 26th or 27th of May, 1911, wasn't that true?

A. I don't recall the dates, but I was here.

Q. But that was approximately true?

A. I should judge so.

Q. And after you appeared before the Grand Jury you went into Mr. Hutson's room, the District Attorney's office?

Mr. SCHLESINGER.—I object as not being proper cross-examination. I haven't asked him a word about any conversation with Mr. Hutson in 1911, or any other time; and not proper cross-examination.

The COURT.—If this is to develop conversations with Mr. Hutson, of course it would not be proper, unless it goes back to this conversation, as is contended, which was communicated to Mr. Goldberg.

Mr. ALLEN.—Yes, sir, your Honor. [622—570]

The COURT.—Proceed. If it goes to that it is proper. Exception.

Mr. ALLEN.—Well, this was the question:

(Testimony of E. S. Fowler.)

Q. After you had appeared before the Grand Jury did you or did you not state, in the presence of Mr. Hutson, and Mr. Bryan, that you had lied to Mr. Bryan down in San Francisco, changed your position in the matter, isn't that true, or words to that effect?

A. Well, I didn't say I lied to him, no.

Q. Well, you used a word equivalent to that, didn't you?

Mr. SCHLESINGER.—I object to that as being improper cross-examination.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—I want to show he made statements out of court contrary to what he made in court. Read the question. (Question repeated.) What was your answer?

A. I can explain that.

Mr. SCHLESINGER.—Yes, he is entitled to explain.

Mr. ALLEN.—If you didn't use the word "lied," did you use a word equivalent to that in the ordinary acceptance of the English language?

Mr. SCHLESINGER.—That is not proper cross-examination and they ought to treat their own witness with more respect, your Honor please.

The COURT.—Let him answer the question.

Mr. SCHLESINGER.—Exception. He has given an answer. He has now asked the privileges of explaining. May he not do so.

The COURT.—I think he said, "I can explain it," but he hasn't done so. Let him answer and then he can explain.

(Testimony of E. S. Fowler.)

A. Yes, I acknowledged to that, that I had misrepresented.

The COURT.—Now, make any explanation that you desire to make. [623—571]

A. When Mr. Bryan came into my office, as I stated, I was busy—

Mr. SCHLESINGER.—Talk louder, please, Mr. Fowler.

A. (Continuing.) —and when I was at leisure he pulled a card out of his pocket and stated—asked me if I had ever been connected with the Great Western Smelting & Refining Company as the Fowler Metal Company. Now, people were coming in constantly and pulling out their cards. I didn't notice it was a Government officer, or pay any attention to it, and I denied the fact that the Fowler Metal Company had ever been connected with the Great Western Smelting & Refining Company. And during the time that I was the manager of that concern it was never known generally that the Fowler Metal Company was identified with the Great Western Smelting & Refining Company, and I didn't reveal it then. However, when I came to Seattle and discovered that I was up before the Government, or rather had been notified by the Government to appear, I realized that I had made a mistake in that statement and it would have to be explained, which I did immediately.

Mr. SCHLESINGER.—What did you explain?

Mr. ALLEN.—Just a moment, now.

Mr. SCHLESINGER.—You said that was all.

Mr. ALLEN.—He explained now. Now, I have a

(Testimony of E. S. Fowler.)

right to cross-examine him further.

Mr. SCHLESINGER.—All right.

Mr. ALLEN.—That is all.

On redirect examination by Mr. SCHLESINGER the witness testified as follows:

Q. Now, Mr. Fowler, did you, as a matter of fact, go before the Federal Grand Jury and tell them that there was such a concern as the Fowler Metal Company, that you were at the head of that [624—572] concern, that you did give authority for this transaction? A. I did.

Q. You did. And, as a matter of fact, the Fowler Metal Company was not in existence at the time of Mr. Bryan's visit to you, was it? A. No.

Mr. SCHLESINGER.—That is all.

On recross-examination by Mr. ALLEN said witness testified as follows:

Q. Mr. Fowler, the conversation, then, with Mr. Bryan took place on March 11, 1911, May 11, 1911?

A. I don't recall the date.

Mr. SCHLESINGER.—That is all, Mr. Fowler. [625—573]

[Testimony of Emar Goldberg, in His Own Behalf.]

EMAR GOLDBERG, produced as a witness on his own behalf, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SCHLESINGER.)

My full name is Emar Goldberg. I was born in the city of Chicago. I was thirty-eight years of age

(Testimony of Emar Goldberg.)

the 18th of last June. I arrived in California when I was about one year old. I attended the public schools in San Francisco and Stockton, California. I attended the State University and spent two and one-half years at the University of California. I moved to the city of Seattle in the early part of 1902. I am a married man and am living in Seattle with my family, and have ever since my arrival here. I have never before been arrested or accused of any crime either against the laws of any State or against the laws of Federal Government. I first entered the employ of the Great Western Smelting & Refining Company about the first of April, 1898, in the capacity of stenographer and bookkeeper and was employed at San Francisco. On arriving in the city of Seattle, I engaged in the metal business with the Great Western Smelting & Refining Company. It is incorporated under the laws of the State of Maine. It has about fourteen or fifteen branches. I became manager or agent of the Seattle branch in 1903. I received at that time a salary of \$175 per month. I was not then, nor have I ever been, a member of the Board of Directors of that concern or any subsidiary corporation of that concern.

Q. Are you or have you ever been an officer?

A. No, sir.

Q. Are you ever consulted with respect to the *eternal* management of [626—574] the parent corporation?

A. No, sir.

Q. Who is and was the vice-president of the Pacific Coast branches of that concern?

(Testimony of Emar Goldberg.)

A. Mr. A. Alper.

Q. And where does he live? A. San Francisco.

Q. Bringing you down to April of the year 1908 what position, if any, did you occupy with that concern in this city? A. I was manager.

Q. Has that concern a permanent place of business here? A. It has.

Q. And has had for what length of time?

A. About ten years and a half.

Q. Bringing you down to that date, first of April, 1908, what was your salary?

A. The first of April, 1908, I was getting three hundred and thirty-three dollars and a third a month.

Q. Were you receiving any additional sums or permitted a drawing account by way of extra allowance?

A. Yes, sir.

Q. What did that extra drawing account amount to per month? A. \$83.44 per month.

Q. And how long was that drawing account to extend?

A. Over a period of five years from the first of April, 1908.

Q. Thence forward? A. Yes, sir.

Q. How were you to be allowed to draw upon that account?

A. The understanding at the time that agreement was made was that I was to get—

Mr. ALLEN.—I object to his stating the understanding. He may state [627—575] if he has any instructions.

Mr. SCHLESINGER.—Mr. Goldberg, I will again

(Testimony of Emar Goldberg.)

have to caution you that you must keep within the technical requirements of the law, although a defendant, so don't give the understanding; just state the arrangement.

Mr. ALLEN.—With whom?

Mr. SCHLESINGER.—What arrangements he had.

Mr. ALLEN.—I object as incompetent, immaterial and irrelevant, unless he states that there is some contract, something of that sort that defines his right.

Mr. SCHLESINGER.—I think under cross-examination you are entitled to develop it.

The COURT.—He can answer. I think it is perfectly proper to explain that account, since you have put it in evidence.

Mr. SCHLESINGER.—Will you kindly proceed, Mr. Goldberg, please?

A. I was to draw \$84.33 per month for a period of five years, but owing to the fact that at that time I was involved in the lumber business, Mr. Alper agreed to let me draw it in any amount that I desired for my own use, but at any time that I had drawn the entire five thousand dollars I was not to draw any more money for the balance of the five years on that particular account.

Q. And did you, as a matter of fact, draw various amounts from that fund?

A. I drew various amounts.

Q. Just state generally what amounts you drew from that fund for the four years succeeding April, 1908.

(Testimony of Emar Goldberg.)

A. I drew amounts from comparatively small amounts, from ten to twenty-five dollars up to six hundred.

Q. You have examined, have you not, Mr. Goldberg, an account which has been called a bonus of bribe account? A. Yes, sir. [628—576]

Q. And does that account correctly state the amount of your withdrawal and the times of your withdrawal?

A. It states it absolutely correct, sir.

Q. Do you know from whom they obtained that statement?

A. They obtained that statement from the office of the Great Western Smelting & Refining Company when I was there.

Q. Do you recall how much you had drawn on that account up to 1912?

A. The account was closed at the latter part of 1912, or the first part of 1913. It was still alive sometime last year. I think it was closed at the first part of this year or latter part of last year.

Q. Were you required to account for the uses to which you had put those funds?

A. No more so than any other part of my salary.

Q. In other words, to make this matter plain, you were allowed to draw, as an extra sum, a trifle less than \$3.00 per day? A. Yes, sir.

Q. With whom did you have that arrangement?

A. With Mr. Alper.

Q. Personally? A. Yes, sir.

Q. Prior to 1908, to the transaction here com-

(Testimony of Emar Goldberg.)

plained of, prior to the allowance of this bonus fund, were you receiving commissions in addition to your salary? A. Yes, sir.

Q. And when were those commissions cut off?

A. On the first of April, 1908.

Q. And what was substituted in lieu thereof?

A. That bonus for the following five years.

Q. You have seen in this courtroom a large number of books and accounts belonging to the Great Western Smelting & Refining [629—577] Company. Did you ever have those books and accounts in your possession?

A. They are the books of the Great Western Smelting and Refining Company, and came from the office of the Great Western Smelting and Refining Company.

Q. And were they ultimately given up by you to the Government? A. Yes, sir.

Q. Have you ever changed or modified a single word in any of those books intentionally?

A. No, sir.

Q. Have you ever concealed them, or any of them?

A. No, sir.

Q. From the Government officials? A. No, sir.

Q. Do you know Mr. House, Government Expert Accountant? A. Yes, sir.

Q. Did he ever examine those books in your concern? A. Yes, sir.

Q. At your concern?

A. He spent considerable time down at the Great Western office going over those books.

(Testimony of Emar Goldberg.)

Q. That was before the matter was presented to the Federal Grand Jury? A. Yes, sir.

Q. Did you aid him in every possible way?

A. He was at liberty to look at any books, files, folder or anything that he desired at the office of the firm.

Q. Did you hide or conceal from him any books or documents? A. No, sir.

Q. Did you aid him in every possible way in his investigations? A. Yes, sir. [630—578]

Q. How long have the Government officials had in their possession these various books and documents?

A. For over two years and a half, since some time in May, 1911.

Q. Have you, Mr. Goldberg, had access to these books and documents in the interim?

A. I went up to Mr. House's room there once and looked at a single item.

Q. Mr. Goldberg, during the latter part of the year 1907, did the Great Western Smelting and Refining Company, at its branch in the city of Seattle, receive any call for a considerable amount of boiler zinc? A. Yes, sir.

Q. Do you recall the size and thickness required by the call?

A. I don't recall the size and thickness, because they called for various sizes and thicknesses.

Q. Now, during the latter part of the year 1907, not referring to this present transaction, but to the one immediately prior thereto, did you deliver any zinc, the Great Western Smelting and Refining

(Testimony of Emar Goldberg.)

Company deliver any zinc, to the Government through its branch? A. Yes, sir.

Q. From whom did you get that particular lot of zinc?

A. From the Matheson and Heggler Zinc Company at La Salle, Illinois.

Q. The Great Western Smelting and Refining Company had been dealing with that concern for a long time, had it not?

A. Oh, for two or three years.

Q. Two or three years. Buying large quantities of material? A. Yes.

Q. In quarter carload lots, half carload lots and full carload lots? A. Yes, sir. [631—579]

Q. And up to the time of the filing of this indictment, was there any question raised by the Government as to the validity of this particular transaction? A. No, sir.

Q. That zinc was delivered, was it?

A. Which particular zinc?

Q. I am referring to the one prior to this main transaction. A. Oh, yes.

Q. And the bill paid? A. Yes, sir.

Q. At or about that time, Mr. Goldberg, did you, as a citizen of Seattle, and as the manager of this branch concern, have any knowledge of the expected entrance to this port of the fleet?

A. Certainly; exeryone had that knowledge.

Mr. ALLEN.—What time?

Mr. SCHLESINGER.—Latter part of 1907.

Q. How did you receive that knowledge?

(Testimony of Emar Goldberg.)

A. Well, it was in the newspapers in the early part of 1908, and about in February and March, 1908, the papers were talking about it a great deal.

Q. Do you read the papers, Mr. Goldberg?

A. Yes, sir.

Q. And was this a matter of common notoriety, a matter of common knowledge?

A. Certainly, everyone knew it.

Q. Now, at or about that time, did you see Mr. Alper? A. Yes, sir.

Mr. ALLEN.—What time?

Mr. SCHLESINGER.—In April, 1908. I am going to fix the date.

Q. When did you see Mr. Alper?

A. In the last week in March or the first few days in April, 1908.

Q. And where, please, did you see him? [632—580] A. Right here in Seattle.

Q. Did you send for him? A. No, sir.

Q. Did you at that time and place have any conversation with Mr. Alper with respect to the purchase by the Great Western Smelting and Refining Company of any zinc? A. Yes, sir.

Q. When the Great Western Smelting and Refining Company made a purchase of this first lot of zinc from the M. & H. Company, which means the Matheson and Heggler Company, did the Great Western Smelting and Refining Company have an option to purchase another car of zinc at the same price within 30 or 60 days' time? A. Yes, sir.

Q. Did you, in the month of April, 1908, have a

(Testimony of Emar Goldberg.)

discussion with Mr. Alper with respect to that zinc transaction?

A. I talked that matter over with Mr. Alper when he was here.

Q. What is it that he said to you upon that occasion?

A. He told me that the price of zinc was low at the time and that—

The COURT.—You ask now what that conversation was?

Mr. SCHLESINGER.—What Mr. Alper said to him.

The COURT.—I don't care for that, but what did he do after he saw Mr. Alper and had this conversation.

Mr. SCHLESINGER.—I want to simply show this jury, as a part of this transaction, exactly what occurred, what instructions he carried out and those instructions were legitimate to negative any criminal intent.

Mr. SCHLESINGER.—You did see Mr. Alper, did you?

A. Yes, sir.

Q. Now, will you please state whether or not you had any discussion with Mr. Alper as to the advisability of taking up this option [633—581] on this second carload of zinc?

A. Mr. Alper directed—

The COURT.—Answer that yes or no.

A. Yes, sir.

(Testimony of Emar Goldberg.)

Q. Now, will you please state what that conversation was.

Mr. ALLEN.—We object, your Honor, for the same reason. The Government can't be found here by what this witness states what might have been said to him by one of many, many people. The question we are concerned in is what this man did. If Mr. Alper did anything let him state that.

Mr. SCHLESINGER.—Well, what a man did must be determined in the light of surrounding circumstances. Whether we acted in good faith or whether we acted as a common thief, that is what this jury want to know.

The COURT.—As I stated a moment ago, let him state what he did now, and we will determine later—I don't want to get a lot of conversation—

Mr. SCHLESINGER.—Your Honor, we want to show he acted under instructions, that what he did was under instructions.

The COURT.—I have stated what I thought. You may proceed. He has stated that he had a conversation. Now let him proceed.

Mr. SCHLESINGER.—I understand he may explain it later on by way of supplement?

The COURT.—Certainly.

Q. After this conversation with Mr. Alper, what did you then do?

A. I was directed to purchase this carload of zinc but did not buy it immediately. I can't very well explain that unless I explain what Mr. Alper told me to do.

(Testimony of Emar Goldberg.)

A. Mr. Alper told me—

Mr. ALLEN.—I again renew my objection to his stating his conversation. It wouldn't relieve this man of any criminal responsibility. [634—582]

The COURT.—At this time I think he could state what he done without reciting the conversation.

Mr. SCHLESINGER.—Q. Well, what did you do?

A. I did not buy any carload of zinc immediately. I waited until such time—

Q. Please speak slowly to give Mr. Allen a chance to get it. What did the Great Western Smelting and Refining Company untimately do through you in the matter of taking up that option?

A. The option was taken up. The moment that the Navy Department asked for a price on some zinc. On the same day that the Navy Department asked for a price on some zinc a wire was sent to the Matheson & Heggler people ordering this car on which the firm had an option. That was as per my instructions from Mr. Alper.

Q. Did you, in this discussion—don't say what was said—did you in this discussion with Mr. Alper discuss with him or he with you the probability of this fleet requiring zinc boilers? A. Yes, sir—

Q. Don't state the conversation.

Mr. SCHLESINGER.—Q. Did you also discuss with Mr. Alper the probability or possibility of the Government not taking this second car of zinc?

A. Yes, sir.

Q. And what did you conclude in that regard?

(Testimony of Emar Goldberg.)

Mr. ALLEN.—Just a moment. Now, I object to his conclusions.

Mr. SCHLESINGER.—I want to know what actuated him; what he was thinking about, what he was doing, to put all of this matter before these 12 men. I submit, if your Honor please, in a conspiracy case, the widest possible latitude is allowed not only to the defendant, but also to the Government and your Honor has, in conformity with that rule, given the Government extreme [635—583] latitude.

The COURT.—The inquiry now is, what did he conclude?

Mr. SCHLESINGER.—What did he do?

The COURT.—Well, he may say what he did.

Q. Did you discuss with Mr. Alper as to what would happen in the event of the Government not taking that zinc? A. Didn't make any difference.

The COURT.—He can answer that yes or no.

Q. Answer that yes or no. A. Yes, sir.

Q. What was the substance of that talk?

Mr. SCHLESINGER.—Did you discuss with Mr. Alper the probability or possibility of the Government taking this second car of zinc?

A. Yes, sir, that matter was discussed.

Q. What did he say to you in that respect?

A. He said that it would not make any difference if the Government took it or not, because the price of zinc at that time was low and if the Government didn't take it it was good stock, and easy to sell; the firm could afford to carry it.

Q. What did you say, if anything, about the price

(Testimony of Emar Goldberg.)

at which zinc could be procured under the then existing conditions?

A. We had an option with the previous price, which was very low. Mr. Alper wanted the car immediately but I did not want to order the car immediately. At least, I didn't think it would be a good idea, I told him, to order the car immediately, because if the Government, or the Navy Department, did want some zinc they might want sizes that we might not buy, and for that reason, in place of ordering it right away, as Mr. Alper wanted me to do, we decided to wait and see if the Government wanted some zinc and then we would order what they wanted and if they did not [636—584] want it we would order a straight carload and exercise the option.

Q. Was that second car covered by this option?

A. Yes, sir.

Q. And the price had already been fixed?

A. Yes, sir.

Mr. SCHLESINGER.—Well, was anything said as to your proposal to sell that second car to the Government?

A. Yes, sir.

Q. What was that?

Mr. ALLEN.—My objection goes to this same matter.

The COURT.—Yes.

A. Well, Mr. Alper said it didn't make any difference if we did sell or didn't sell that car to the Government because it was bought at such a low price we couldn't possibly lose any money on it even if we

(Testimony of Emar Goldberg.)

carried it in stock.

Q. Was anything said by Mr. Alper as to the asking price of the Government for that second car?

A. Yes.

Q. What was said by him in that regard?

A. Mr. Alper asked me who was carrying zinc in town, how much of it was, how much we had been charging for zinc, and then instructed me that he wanted us to ask 12½ cents a pound for this zinc, because as long as we had an option on the zinc no one else would be in a position to supply this zinc, and therefore, we could either get a good price for it or not get the order at all, and it didn't make any difference if we didn't get the order because the zinc would be worth that money.

Q. Did you regard that as good or poor stock?

A. Oh, it was good stock; there is no question about that.

Q. Did he or not direct you to put in your bid at that figure? [636½—585]

A. He directed me to put in the bid at 12½ cents if the Government asked for any zinc.

Q. Did you at that time have any discussion with him concerning a man named Kettlewell of the navy pay office? A. Yes, sir.

Q. What, if anything, did you tell him?

A. I told him that Mr. Kettlewell, who was at that time principal clerk of the office, had borrowed some money from me and was continually worrying me and nagging the life out of me, wanting more money, and he told me that under the circumstances, if we

(Testimony of Emar Goldberg.)

were going to bid on any zinc, if the Government was going to require any zinc, the best thing to do would be to bid in another name so he wouldn't know the Great Western Smelting and Refining Company had secured the business, and, therefore, think that he had a hold on the firm for some reason or other; and he suggested bidding in the name of the Fowler Company, which, of course, at that time belonged to the Great Western Smelting & Refining Company. He told me when he went back to San Francisco, which was in a few days, he would tell Mr. Fowler about it and if Mr. Fowler objected and he didn't think there was any occasion for his objecting to it, he would let me know. Of course, he never said anything more about it. Naturally I presumed he told Mr. Fowler about that and it was satisfactory.

Mr. ALLEN.—Don't tell what you presumed.

Mr. SCHLESINGER.—Did you at that time have any interests of any kind or character in the Fowler Metal Company?

A. Personally, no, sir.

Q. Well, did you have impersonally?

A. No, sir.

Q. What did you tell him, if anything, with respect to the consultation [637—586] with Mr. Kerr?

Mr. ALLEN.—I renew, again, your Honor, my objection on the ground—

Mr. SCHLESINGER.—I thought it was understood it was to go in subject to your objection.

Mr. ALLEN.—If the Court so understands it, and

(Testimony of Emar Goldberg.)

wants me to pursue that, I will.

The COURT.—You may make your objection.

Mr. ALLEN.—I object to it on the ground it is immaterial, irrelevant and incompetent. They can easily produce here probably a dozen or fifty men that walked through this man's office and told him to buy or not buy zinc.

The COURT.—You may have views on this. The weight of this other matter is for the jury, but I don't mean by that that anything and everything should be—

Mr. SCHLESINGER.—Oh, no, we don't want that.

The COURT.—The concise statement of just what he did.

Mr. SCHLESINGER.—What occurred, what he acted on.

(Jury recalled.)

Mr. SCHLESINGER.—Did you take up with Mr. Alper the matter of the application of Kettlewell?

A. Yes, sir.

Q. And what did he say to you?

A. In regard to bids that were put in or in regard to any other matter?

Q. No, in regard to the loans.

A. I told him this, or at least he suggested that the course that Mr. Kerr had suggested previous to his arriving in Seattle was satisfactory, and then he said, "Now, Goldberg, if you go up there and tell his superior officer that he borrowed money from [638—587] you, or keeping on borrowing money from

(Testimony of Emar Goldberg.)

you, the men won't believe you; he is a Government employee and it is your word against him, and they won't believe you; the best thing is for you not to loan him any more money and try to get back what you loaned him and don't loan him any more."

Q. Did you subsequently confer with Mr. Kerr about the importunities of this man Kettlewell?

A. I don't remember definitely whether I went to Mr. Kerr again about that or not.

Q. Did you go to him at any time about it?

A. I went to him before Mr. Alper came to Seattle, I went to him.

Q. And what did you say to Mr. Kerr?

A. Before Mr. Alper came to Seattle I went up to see Mr. Kerr and told him the circumstances, and he told me to report him to his superior officer, and then I told him that Mr. Alper was coming up here in a few days. Then Mr. Kerr says, "If Mr. Alper is going to be here in a few days what do you think about waiting until he comes here"? I told him I thought the best thing to do would be to wait until Mr. Alper came to Seattle, because I didn't want to do a thing like this without Mr. Alper's permission, that is, the head of the firm on this coast.

Q. Did you receive any blank proposal for the purpose of bidding on this zinc? A. Yes, sir.

Q. Did you go to the navy pay office for that purpose? A. Yes, sir.

Q. What occurred in the Navy Pay Office?

A. Someone in the Navy Pay Office telephoned to us on the morning of the 11th that there was a pro-

(Testimony of Emar Goldberg.)

posal for 50,000 pounds of zinc plate. So I went up there to get this proposal, and Mr. Kettlewell was there at the time, and he asked me how much we [639—588] were going to bid for the zinc. And this was a matter, the very subject Mr. Alper had brought up when he was in Seattle. He said to me at the time, "Now," he says, "if this man Kettlewell has charge of these bids," which he naturally would have charge of, "why," he says, "if he asks you what you are going to charge for the zinc try and let him know you are going to bid about thirteen cents for the zinc and then put in your bid at twelve and a half."

Q. Did you see Mr. Corder with respect to putting in the bid at that figure? A. Yes, sir.

Q. And what did you say to Mr. Corder and what did he say to you in that respect?

A. I told Mr. Corder that Mr. Alper instructed the Great Western Smelting & Refining Company to bid \$12.50 on the zinc. Mr. Corder agreed to it.

Q. Had you any prior business transactions with the Corder Company? A. Oh, yes.

Q. Did you or not do business with Mr. Corder in the matter of buying and selling zinc to merchants generally? A. Yes, sir.

Q. About how many merchants or persons in trade had the Corder Company and the Great Western Smelting & Refining Company sold zinc to? Just roughly estimate it.

A. Thirty or forty or fifty. The Corder Company sold practically all the zinc, really jobbed it and

(Testimony of Emar Goldberg.)

retailed it, and the profits were always divided on his zinc between the Great Western Smelting & Refining Company and the Corder Company before the Government had bought any zinc at all.

Q. In other words, you did not enter into any arrangement with Corder for the sole purpose of selling supplies to the Government? [640—589]

A. No, sir.

Q. Directing your attention to the latter part of 1907, after you had sold some zinc and materials to the Government, were you at or about that time approached by Mr. Kettlewell with respect to any particular loan? A. Yes, sir.

Q. Please tell these gentlemen just what occurred in that regard.

A. In the month of December, 1907, Mr. Kettlewell asked me to come up to the pay office for some proposal of some kind, and when I was up there he asked me to loan him a thousand dollars. He told me that he would give me a second mortgage on some piece of property out on Capitol Hill, but I told him at the time that I was involved in the lumber business, that all the money I had was in the lumber business, and I am under the impression I even owed money to the bank at the time, and there was no way of my raising money. He suggested raising it from the bank and he suggested my getting it from the Great Western Smelting & Refining Company. But I told him that I had no authority of any kind whatsoever to take a thousand dollars, or any sums, from the Great Western Smelting & Refining Company

(Testimony of Emar Goldberg.)

and loan it to anybody else.

Q. Now, that was in the—

A. In the month of December.

Q. In the latter part of 1907, was it?

A. Yes, sir.

Q. And did you, subsequent to that time, have any business with the Government? A. Oh, yes.

Q. Did you see a letter which was read here the other day written by Mr. Kettlewell?

A. Yes, sir. [641—590]

Q. And was this conversation that you had with Kettlewell prior to this time? A. Yes, sir.

Mr. ALLEN.—Will you identify that particular letter which you have in mind so I will know what you are talking about?

Mr. SCHLESINGER.—Don't you know that letter of January—that letter is dated January 11th, is it not?

A. I think it was read here "January 11th."

Q. It is the one that you put in, Mr. Allen?

Mr. ALLEN.—I want to identify it, that is all.

Mr. SCHLESINGER.—Had you at that time loaned Kettlewell any money?

A. No, sir, I had not loaned him a cent up to that time.

Q. Did Mr. Kettlewell ever call at your house for money? A. Yes, sir.

Q. How many times, if you can now remember?

A. Just once that I remember he called at my house.

Q. Did he ever telephone you?

(Testimony of Emar Goldberg.)

A. Oh, he telephoned to me, and telephoned to my house and telephoned to the office.

Q. Did you give him any money at your home?

A. No, sir.

Q. What did he say he needed money for?

A. The first thousand dollars that he wanted, said he was figuring on some kind of a land deal; and after that, when he asked me for money again in the month of January, he told me that his mother was sick—well, he told all kinds of stories at different times. He was always asking me for money.

Q. Now, Mr. Goldberg, without going into all of these various details, mention to these twelve men, if you can, how many times Kettlewell approached you for money? [642—591]

A. I don't know how many times he approached me. After he had borrowed some money from me he tried afterwards, a number of times, to get more money, but, on the advice of Mr. Alper, all the money I loaned him was before Mr. Alper came to Seattle that time, and after that I never loaned him any more money. All I tried to get was to get the money back I loaned him.

Q. What was the highest amount he suggested and the lowest amount?

A. He suggested a thousand dollars was the highest amount and fifty dollars was the lowest amount.

Q. Did Mr. Kettlewell at any time say anything to you in the nature of threat upon your declining to give him this one thousand dollars?

A. The first time that he asked me for this thou-

(Testimony of Emar Goldberg.)

sand dollars, when I told him, showed him that I couldn't give it to him, he told me if I didn't show him that little accommodation, as he put it, he would see the Great Western Smelting & Refining Company didn't do any more business with the Navy Department. I told him that I couldn't help that, that I didn't have the money and couldn't get it for him.

Q. Did he, in that same conversation, say that they were doing more business than they were entitled to anyhow, or words to that effect?

A. He said that the Great Western Smelting & Refining Company were getting more business than they were entitled to get at the navy yard at the present time; that is the remark that he made, the Great Western Smelting & Refining Company are getting more business than they are entitled to get at the navy yard at the present time.

Q. Will you let me have the letter of January 11th, please, Mr. House? Did he, in that conversation, talk with you about his relations with other concerns doing business with that navy yard? [643—592]

A. The remark he made was, that other people were treating him right and he expected the Great Western Smelting & Refining Company to treat him right. My answer to that was, I didn't know what he meant by other people treating him right, but the Great Western Smelting & Refining Company, as far as I was concerned, couldn't give away any money, and I didn't have any authority to do it.

No. 2413

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FOUR VOLUMES.)

EDWIN F. MEYER and EMAR GOLDBERG,
Plaintiffs in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME III.
(Pages 705 to 1120, Inclusive.)

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Northern Division.

FILED
JUL 1 - 1914

No. 2413

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FOUR VOLUMES.)

EDWIN F. MEYER and EMAR GOLDBERG,
Plaintiffs in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME III.
(Pages 705 to 1120, Inclusive.)

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Northern Division.

(Testimony of Emar Goldberg.)

Q. Now, Mr. Goldberg, I want you to tell these twelve men whether or not you loaned Mr. Kettlewell any moneys?

A. Yes, sir, I loaned Mr. Kettlewell all told \$225 in three sums of \$75 each.

Q. What was the largest of those amounts that you loaned him? A. \$75.

Q. Have you ever had any of those sums returned to you? A. No, sir.

Q. In consideration of giving those moneys to him, or loaning them to him, did you ask him to violate any rule of the Navy Pay Office? A. No, sir.

Q. Did you ask him to give to you or your concern any advantage not enjoyed by other concerns?

A. No, sir.

Q. And did you derive any personal benefit of any kind or character out of those personal loan transactions? A. No, sir.

Q. Did he ever promise to repay to you those sums? A. Yes, sir.

Q. Has he ever done so?

A. Never repaid a cent of it.

Q. I believe you testified that at one time he approached your home. [644—593] Can you recall the time and the hour?

A. It was about a year later; it was late in 1909 he came out. He telephoned to the house one night saying that he wanted to see me—

Mr. ALLEN.—You didn't fix the time.

Mr. SCHLESINGER.—What time, what month?

A. That was late in 1909; I don't recall; almost a year and a half afterwards, after I had been trying

(Testimony of Emar Goldberg.)

to get this money back from time to time again. He told me then that he had to have some money, that he had to pay a bill the next day, and wanted a hundred dollars, or a hundred and twenty-five, I don't recall which, and I told him that I didn't have the money to spare. I had lost a great deal of money at that time in the lumber business, and it took every cent I could get hold of to keep myself going.

Q. Now, I will ask you in regard to the so-called "bribe" account, or bonus account.

A JUROR.—Can a juror ask the witness here a question?

The COURT.—Certainly.

A JUROR.—I wanted to know if he ever took a note for this money or an I. O. U.?

A. No, sir.

Q. Never did? A. No, sir.

Mr. SCHLESINGER.—Mr. Goldberg, without wasting time, you have examined this account so often referred to, have you not?

A. The bonus account?

Q. Yes. A. Yes, sir.

Q. Do any of those items upon that account refer to moneys given by you to Mr. Kettlewell? [645—594] A. No, sir.

Q. Did you pay out any of those moneys for the purpose of enabling you to gain any advantage?

A. No, sir.

Q. I will ask you whether any of those payments have any reference to any of the Government checks

(Testimony of Emar Goldberg.)

received by the Great Western Smelting & Refining Company.

A. They have none whatsoever.

Q. I will call your attention to the first item appearing on that check, on this account, dated April 27, 1908, in the sum of \$500. To what does that item, if you know, have reference?

A. I drew \$500 on the 27th of April, deposited to my account in the National Bank of Commerce, made out a check for \$500 to the account of the Great Western Lumber Company and deposited it in the Scandinavian-American Bank, and it shows on the books of both companies today.

Q. And has the Scandinavian-American Bank, which is not a party to this alleged conspiracy, has that bank that original deposit slip? A. Yes, sir.

Q. I will show you what purports to be a copy of that original deposit slip and ask you whether it is a true copy thereof? A. Yes, sir.

Mr. SCHLESINGER.—I assume you will not require us to produce the original?

Mr. KERR.—That has the stamp of the bank on it.

Mr. SCHLESINGER.—Mr. Allen, do you wish to see it?

Mr. ALLEN.—I would prefer you to put it in an orderly way. The bank testimony is the best testimony in the world on that.

Mr. SCHLESINGER.—Well, we will corroborate it by the bank's testimony. [646—595]

Mr. ALLEN.—Well, do so.

(Testimony of Emar Goldberg.)

Mr. SCHLESINGER.—I will ask you whether or not you know who wrote upon that deposit slip the word “Duplicate”?

A. I asked Mr. Woolfong down to the Scandinavian-American Bank to give me a duplicate of the deposit made on the 27th of May, 1907, and he handed this slip to me.

Q. And is that a duplicate? A. Yes, sir.

Mr. SCHLESINGER.—That, if your Honor please, we will offer in evidence as part of the examination.

Mr. ALLEN.—We object on the ground it is immaterial, irrelevant, incompetent and not the best evidence.

Mr. SCHLESINGER.—We will withdraw the offer and have it marked now for identification only.

(Paper referred to marked Plaintiff's Exhibit “A-27” for identification.)

Q. Mr. Goldberg, I will direct your attention to another item appearing in that account of June 1st in the sum of \$500. Do you know whether or not that item has any reference to any Government transaction? A. It has none whatsoever.

Q. Did you pay that sum?

Mr. ALLEN.—What is the date of that?

Mr. SCHLESINGER.—That is June 1st. Did you pay that sum out to Mr. Kettlewell, to Mr. Meyer, or to any other Government employee by way of commissions or by way of *their* in any alleged profit? A. No, sir.

Q. Without going over all of these items one by

(Testimony of Emar Goldberg.)

one, because I shall produce an accountant, if your Honor please, at some subsequent stage of this case, did you pay any of these sums [647—596] mentioned in this bonus account to any government employee by way of commissions or profits, or for any other purpose? A. No, sir.

Q. Do these expenditures represent legitimate expenditures upon your part? A. They do.

Q. And have they any reference to any receipt by the Great Western Smelting & Refining Company of moneys from the Government? A. No, sir.

Q. Did you ever agree to pay Mr. Kettlewell twenty per cent of the profits of the Great Western Smelting & Refining Company? A. No, sir.

Q. Did you ever agree to pay Mr. Meyer twenty per cent additional? A. No, sir.

Q. Of the profits of the Great Western Smelting & Refining Company? A. No, sir.

Q. Did you have any authority, implied or express, to make any such arrangement?

A. I had none whatsoever. There wouldn't have been any profits left.

Q. Well, were you authorized? A. No, sir.

Q. Were you authorized to dispose of the profits of the Great Western Smelting & Refining Company in the city of Seattle? A. No, sir.

Q. Did you ever discuss with Mr. Alper, or the president of the parent concern in Chicago, or any other official of that company, the advisability of having Kettlewell and Mr. Meyer participate in the profits of this concern, or in any of its branches?

(Testimony of Emar Goldberg.)

A. No, sir. [648—597]

Q. Have you ever figured up for the purpose of ascertaining whether any of these sums represent 20 per cent, 40 per cent, or any other per centum of the transactions had through this Navy Pay Yard?

A. They can't represent anything because they have no relation to it whatsoever.

Mr. SCHLESINGER.—Did you ever have any authority to dispose of the profits of this concern?

A. No, sir.

Q. Have you ever been called upon or obligated to advance money out of your own pocket for the benefit of the concern? A. No, sir.

Q. Have you ever personally, to the extent of a single dime, profited by this transaction?

A. No, sir.

Q. Did you ever tell Kettlewell to insert five days in any proposed bid?

A. I never told *told* Kettlewell to insert \$5 or anything else on any bid.

Q. Did you ever enter into any contract of any kind or character with him? A. No, sir.

Q. You have heard mentioned in this courtroom repeatedly the name of an alleged concern, Lyman-Evans & Company. Do you know who was the author of that concern?

A. I have heard it in the courtroom.

Q. Had you known previously?

A. Not till I heard it in the courtroom.

Q. Had you any interest of any kind or character in that concern? A. No, sir.

(Testimony of Emar Goldberg.)

Q. Do you know a concern called Smith-Hunt & Company?

A. Just heard the name in the courtroom. [649—598]

Q. Did you have any interest in that concern?

A. No, sir.

Q. Did you know of its previous existence?

A. Not until I heard of it. I am under the impression that was mentioned to me by Mr. House one time, or Mr. Bryan, I think.

Q. You mean by Mr. House, the Mr. House who has been experting these books for some two and a half years? A. Yes.

Q. This Mr. House (showing)? A. Yes.

Q. Do you know a Mr. Peter Brandt?

A. Only as I have heard the name mentioned in the courtroom.

Q. Had you any interest of any kind or character in the business of Mr. Peter Brandt? A. No, sir.

Q. Did you have any interest of any kind or character in any of the transactions of Kettlewell, whether conducted in his own name or under fictitious names? A. No, sir.

Q. Do you know his brother-in-law or relative P. McManus?

A. I have met him since these indictments were brought.

Q. Did you know that his relative P. McManus had put in a bid covering this same transaction?

A. After the bids were opened. I didn't know it

(Testimony of Emar Goldberg.)

was his relative or that he was any relative to him at that time.

Q. Did you have any interest of any kind or character in that bid? A. No, sir.

Q. Did you invite it? A. No, sir.

Q. Did you ever talk with Mr. McManus upon the subject?

A. Never met Mr. McManus until after these indictments were brought. [650—599] never knew who he was.

Q. Do you know this defendant Mr. Meyer?

A. Yes, sir.

Q. And how long, please, have you known Mr. Meyer, Mr. Goldberg? A. Oh, about ten years.

Q. Did you ever enter into any conspiracy of any kind or character with Mr. Meyer to defraud the Government? A. No, sir.

Q. Did Mr. Meyer ever tell you to pay money to Kettlewell?

A. Mr. Meyer never told me anything about Kettlewell.

Q. Did Mr. Meyer ever demand or receive from you any proportion of the profits of the Great Western Smelting & Refining Company? A. No, sir.

Q. Did Mr. Meyer ever apply to you for any loans?

A. No, sir.

Q. Do you know Mr. Ray Spear? A. Yes, sir.

Q. The former paymaster? A. Yes, sir.

Q. You have seen him frequently, have you not?

A. Yes, sir.

Q. In the Navy Pay Office?

(Testimony of Emar Goldberg.)

A. No, at the navy yard.

Q. In the navy yard, yes. You likewise know Mr. Mell and Mr. Brown, who were connected with that office? A. Yes, sir.

Q. Did you ever have any arrangements with them of any kind or character giving to the Great Western Smelting & Refining Company any advantage in the matter of bidding? A. No, sir.

Q. Were you ever advised or instructed by your concern to secure any [651—600] advantage in the matter of bidding? A. No, sir.

Q. You have heard, Mr. Goldberg, the testimony of Mr. Kettlewell that you gave him at some unnamed time and for some unnamed purpose the sum of \$350. What is the fact about that?

A. I never give Kettlewell \$350 in all his life.

Q. And you don't intend to during your life, if you can help it? A. No, sir.

The COURT.—Proceed.

Mr. SCHLESINGER.—You have seen here this check, this Government exhibit, this large check. When did you receive that check?

A. On the 26th day of May.

Q. Of what year? A. 1908.

Q. From whose hands did you receive that check?

A. From Mr. Kettlewell.

Q. How did you happen to know that that check was ready for you?

A. On the morning of the day that I received the check Mr. Kettlewell telephoned down to our office and told me that the check for the Fowler Metal Com-

(Testimony of Emar Goldberg.)

pany was ready, and that he knew that it belonged to the Great Western Smelting & Refining Company. So I went up there to get it.

Q. And what did Mr. Kettlewell say to you when you called for that check?

A. I went up to the office and I asked him for the check, and he said, "Well, you are not going to get this check," or words as near as I can remember, "You are not going to get this check, because you are not entitled to it. The material will be rejected, and P. McManus was the lowest legitimate bid in there when that zinc was ordered." I told him that the material had [652—601] been delivered by the Great Western Smelting & Refining Company, that there was absolutely no question about it, that the Fowler Metal Company belonged to the Great Western Smelting & Refining Company, that I didn't know how he found it out, but as long as he knew it the check was the property of the Great Western Smelting & Refining Company and we were going to get it. "Well," he said, "you won't get it and that is all there is to it." I says, "Well, I will go down and consult our attorneys about it and see whether I get it or not." So I went down to see Mr. Kerr. I told Mr. Kerr the circumstances, and he told me to go up and make a formal demand on Kettlewell for the check. So I went back there; I had to wait quite a little length of time for Mr. Kerr, because he was busy in the office there—and when I got back it was after banking hours, and I went back there again to see Mr. Kettlewell and told him I had been to see

(Testimony of Emar Goldberg.)

our attorneys, that I was told to call and make a formal demand on him for that check. He looked at me a minute or two and didn't say anything, and finally he went up and got the check and says, "Well, you can have this check, but I will tell you right now you will never get the money on this check." He says, "You can take it." "Well," I says, "I don't know whether we will get the money or not, but I will take the check anyway."

Q. What date was it that you received the checks from his hands? A. On the 26th day of May.

Q. Well, after having physically gotten the check how long did you retain it in your possession, and why?

A. After we got the check I was afraid that perhaps they would reject the zinc, or do something, I didn't know what authority he had or what he could possibly do, so I took the check down to the office and we kept it there for four or five days, thinking [653—602] perhaps that the Paymaster or someone might call us up and tell us to return the check, or tell us the material was going to be rejected or returned, or something; and it was on Friday or Saturday that finally I decided we would deposit the check, and I called up Mr. Silverstone and asked him to come down town so he could deposit the check, because he had originally made out the bid.

Q. In other words, you receive that check upon the 26th day of May, and that check rested in your office until the 31st day of May?

A. Until the 1st day of June.

(Testimony of Emar Goldberg.)

Q. 1st day of June? A. Yes, sir.

Q. Uncashed? A. Yes, sir.

Mr. SCHLESINGER.—What, if anything, accompanied that check?

A. What they call a public bill.

Q. Have you that public bill with reference to this?

Mr. ALLEN.—It is in evidence.

Mr. SCHLESINGER.—What is the number of the exhibit?

Mr. SHIPLEY.—Why, it is here, Mr. Schlesinger.

Mr. SCHLESINGER.—I will ask you whether this so-called public bill accompanied that check.

A. Yes, sir, this public bill was with the check.

Mr. KERR.—Refer to it as an exhibit number.

Mr. SCHLESINGER.—Yes. This is Defendants' Exhibit letter "G."

Q. What did you do with this public bill at the time that it was given to you by Kettlewell together with the check?

A. Put the bill in our files, put this in our files.

Q. On what date?

A. On the 26th day of May, 1908. [654—603]

Mr. SCHLESINGER.—I will ask you gentlemen to look at that, please (handing same to juror).

Mr. KERR.—Has that been offered in evidence?

Mr. SCHLESINGER.—Yes, Mr. Kerr, offered in evidence by the defendant.

Q. Did the Government ever stop payment on that check?

A. No, sir, nothing more was heard or said about it.

Q. During those five days did you hear a single

(Testimony of Emar Goldberg.)

word of complaint from that office?

A. No, sir, not a word.

Q. Was there anything to have prevented you from securing money on that check on the 26th day of May?

A. No, sir—well, I didn't get the check until after banking hours. I could have secured the money on the 27th.

Q. What was the 27th, was it a holiday or week day? A. No, sir.

Q. A week day? A. A week day.

Q. And the banks of Seattle were open?

A. Yes, sir.

Q. Transacting business. To whom did this zinc bill which was sold to the Government go?

A. To the Great Western Smelting & Refining Company and the W. A. Corder Company.

Q. In equal proportions? A. Yes, sir.

Q. Did you personally have any interest in the proceeds of that transaction? A. No, sir.

Q. And what became of the proceeds, how were they divided?

A. The books show that when the check was received one-half the amount of it was credited to the Corder Company, just in exactly [655—604] the same way that one-half the original charge was credited to them, charged to them.

Q. And was that the same course that you pursued with respect to sales to the general trade?

A. Yes, sir.

Q. Joint sales?

(Testimony of Emar Goldberg.)

A. Identically the same way; all zinc sales were handled the same.

Q. Did Mr. Corder receive one-half of the profits?

A. He did.

Q. Did you make any deduction from that check or otherwise? A. No, sir.

Q. In the settlement that you had with Corder & Company did he pay you any money in any settlements? A. Yes, sir.

Q. And do the books show it? A. Yes, sir.

Q. Had Mr. Corder purchased one-half of this zinc before its delivery to the Government?

A. Yes, sir.

Q. And had he paid for his one-half?

A. Yes, sir.

Q. I would like to have now the M. & H. correspondence (same being produced). I will call your attention to a letter from Matheson & Heggler Zinc Company dated February 8, 1908, and marked Defendants' Exhibit "4." I will ask you whether or not your concern received that letter in due course of business. A. Yes, sir.

Q. Did you read the slip pasted upon that letter?

A. Yes, sir.

Q. Did you understand it?

A. Yes, sir. [656—605]

Q. Did you know that the Government had tried to buy zinc from this concern?

A. I knew it when I received that letter. Or before, I think, they wired us. I think Matheson &

(Testimony of Emar Goldberg.)

Heggler wired us they had an inquiry from the Government.

Q. You were a valuable customer, that is, the Great Western Smelting & Refining Company, of this concern?

A. The Great Western had purchased several cars from them. I would think they purchased five or six straight carloads besides a number of smaller purchases.

Q. Are you authorized to fix the amount of profit which the Great Western Smelting & Refining Company shall make in its business?

A. All the business that is done by the Great Western Smelting & Refining Company at Seattle is reported to Mr. Alper at San Francisco, and if there is anything at all that is not satisfactory to him he doesn't hesitate to say so.

Q. How often do you make reports?

A. Every day; every item.

Q. What would happen if you failed to make a report every day?

A. We would get a letter wanting to know why the report didn't come in.

Q. Did you regard the profit in this particular case as a reasonable one?

A. Yes, sir, based on the circumstances surrounding the purchase.

Q. Was there or not material in Seattle at that time available? A. Not to my knowledge.

Q. Did you have the only material that was available in large lots?

(Testimony of Emar Goldberg.)

A. I think the Great Western had the only available supply of zinc in town at that time.

Q. Had you ever made sales to the trade generally prior and subsequent to this time at practically the same figure? [657—606] A. Yes, sir.

Q. To merchants?

A. Merchants, manufacturers.

Q. Just mention just about three or four of such names.

A. The Moran Company, Seattle Construction & Drydock Company now, the Hefferman Drydock Company, the Lloyd Manufacturing Company. They purchased several lots at twelve and a half cents per pound.

Q. How do those figures correspond, or rather compare, with the figures received from this sale to the Government? A. Practically the same.

Q. Had you ever sold to the Government at higher figures? A. At much higher figures.

Q. How much higher?

A. Sixteen cents a pound.

Q. Had you ever sold to the Government at fourteen cents a pound?

A. Fourteen, fifteen and sixteen, if my memory serves me.

Q. And have those transactions, so far as you know, met with the approval of the Secretary of the Navy at Washington, D. C.?

A. Never had any complaint. That was sometime previous to this sale.

Q. You never had any complaint?

(Testimony of Emar Goldberg.)

A. No, sir. That was, I believe, in 1907.

Q. And was that before Kettlewell had ever tried to borrow any money from you?

A. Considerably before, some of it was.

Q. Have any of the officials of the Great Western Smelting & Refining Company been indicted?

A. No, sir.

Q. Has any suit or suits been brought against that concern to recover any money?

A. No, sir. [658—607]

Q. Did you have any business dealings, or your concern, with the Department at Washington direct?

A. Yes, sir.

Q. Many of them?

A. Why, a great deal more than through the Navy Pay Office in Seattle.

Q. There has been some question here as to an excess delivery of some 9,000 pounds. How did you and Mr. Corder come to deliver 9,000 pounds more than was called for in the requisition? Please explain that to the jury.

A. The proposal or award called for 50,000 pounds. When the car came in there was 50,000 pounds in the car, but we had between nine and ten thousand pounds of it on hand. We talked the matter over and decided that if they were so anxious for 50,000 pounds over there they would probably take this nine or ten thousand pounds that we had on hand.

Q. For the battleship fleet?

A. For the battleship fleet. The battleship fleet was due here then. If they didn't take it the worst

(Testimony of Emar Goldberg.)

that could possibly happen would be they would reject it and we would have to take it back again. That wouldn't amount to a great deal.

Q. Did you know at that time that there was such a body as a Board of Inspection at this navy yard?

A. Certainly.

Q. Did you know who comprised that Board.

A. I didn't know who comprised the Board. I knew it was comprised of a couple of officers, or three officers.

Q. Just mention their names.

A. I don't remember the names of them.

Q. Did you have any combination or agreement with the members of that Board of Inspection that they should accept this excess [659—608] delivery?

A. I don't think I ever knew who a single member of the Board was. I knew the Board was generally composed of two officers, or one officer, or three officers, something like that, but as far as knowing them was concerned, I never knew who the members of the Board were.

Q. Is it possible to sell any supplies to the Government without the Board of Inspection inspecting such supplies as to weight, as to quality and as to price?

A. I don't think so. Generally understood that everything that is sold to the Government has to be passed by a Board of Inspection.

Q. And did you know that at the time of this delivery? A. Yes; everyone knows that.

(Testimony of Emar Goldberg.)

Q. Mr. Spear, will you let me have the names, please, of those officers (consulting with Mr. Spear). And do you not know that Captain Stacey Potts was the senior member of that Board?

A. I didn't know who was the member of that Board.

Q. Have you ever met him?

A. I probably called on him. Someone in his office might have telephoned over to us and asked us some question, or in going over there I might have walked into his office, but I never knew who he was. I might have known who he was, might have been introduced to him or met him, but I don't recall.

Q. I believe that you have testified, Mr. Goldberg, that you sold zinc to the Moran Company, to the Seattle Construction & Drydock Company, to the Heffernan Drydock Company, to the Lloyd Manufacturing Company, and a large number of other concerns at even still higher prices, is that true?

A. Yes, sir.

Q. Do you know what amount of business, approximately, the Great [660—609] Western Smelting & Refining Company, through this branch, did in the year 1907?

A. The office of the Great Western Smelting & Refining Company, from about the 1st of April, 1907, to the 1st of April, 1908, was about 225 to \$250,000.

Q. And I will ask you to tell these gentlemen what were your sales through this Navy Pay Office during that same period of time.

A. About \$5,000, probably less.

(Testimony of Emar Goldberg.)

Q. \$5,000 out of a business of nearly \$250,000?

A. Yes, sir.

Q. For that same year, is that true?

A. Yes, sir.

Q. Do you know, and do your books show, the amount of business of the Great Western Company's branch in Seattle from 1908 to 1909? A. Yes, sir.

Q. What was it?

A. Between two hundred and two hundred and twenty thousand dollars.

Q. And what amount of material was sold by your concern through this Navy Pay Office for the same period?

A. About,—between ten and twelve thousand dollars.

Q. And of that sum how much did Mr. Corder's company get? A. A little less than one-half.

Q. Do you know the amount of your business, or the business of your concern in Seattle, from 1909 to 1910?

A. The current year of about May or June to June, was about three hundred to three hundred and fifty thousand dollars.

Q. And of that amount how much went through this Navy Pay Office?

A. About two thousand or \$2,500.

Q. I want to say for your benefit, Mr. Goldberg, that I think you are mistaken by about \$1,000. [661—610]

Mr. SCHLESINGER.—Do you know the amount of business of the Great Western Smelting & Refin-

(Testimony of Emar Goldberg.)

ing Company at this branch between 1910 and 1911?

A. *Out* fiscal year 1910 to 1911, the business was between three hundred and seventy-five and four hundred thousand dollars.

Q. And of that amount how much was transacted with this Navy Pay Office?

A. I don't think it amounted to \$1,000.

Q. And, for the purpose of transacting that vast amount of business, did you use this as a bribe fund?

A. Never used that in that connection whatever.

Q. Did you use any bribe funds to secure business from merchants? A. No, sir.

Q. Or from anybody? A. No, sir.

Q. Did this Navy Pay Office at Seattle, through Mr. Kettlewell, or anyone else, ever call up the Great Western Smelting & Refining Company's branch and ask if they had certain classes of materials on hand?

A. Yes, sir.

Q. Well, just tell what happened in that respect?

A. The Navy Pay Office here, as well as the different departments of the Navy Yard themselves, would telephone and ask if we had a certain class of material. I recall one instance in which they telephoned over in regard to some sand. They telephoned two or three times. And another instance, they telephoned about 400,000 pounds of scrap lead, and wrote us a letter about it afterwards. In another instance they telephoned in regard to some of these plates, some one from one of the departments at the yard, I don't recall whether it was the Engineering Department, I never kept very good track

(Testimony of Emar Goldberg.)

of that and I never did know [662—611] very much about the different departments of the yard, but somebody called in regard to certain sizes of zinc plate and asked if we had them, and said they were using considerable, and if we carried them in stock, and I told them I thought we were going to carry them in stock from then on.

Q. Was there anything to your mind strange about the Navy Pay Office, or any of its men calling you up on matters of this character?

A. Nothing strange whatsoever about it. It was done in the regular course of business.

Q. Did they call up merchants generally?

A. I imagine they would call up merchants generally if they would call us up.

Q. Did you receive any information as a matter of confidence from any employee there?

A. No, sir.

Q. Did you receive any previous advance information to which you were not entitled? A. No, sir.

Q. When was the last time, Mr. Goldberg, you ever had a conversation of any kind or character with this man Kettlewell?

A. About the 28th of March, a day or two before he was arrested.

Q. What is that, Mr. Goldberg?

A. A day or two before he was arrested.

Q. What was that conversation, or where was it?

A. I was in a bootblack-stand having my shoes shined just across the street from the Butler, and he walked along early in the morning and I called him,

(Testimony of Emar Goldberg.)

and I bent over and asked him if he couldn't let me have some of that money, because I needed it, and he said he would let me have it in a week or two; and at the same time he asked *him* if I knew who Lyman-Evans & Company [663—612] were. It seems to me the day before that I had been over to the navy yard and Brown and I am under the impression, not Mr. Spear, but Mr. Mell, and another officer who were in the office there, asked me about the price of ferromanganese, and also asked me if I knew a firm named Lyman-Evans & Company, St. Louis. I told him I had never heard of that firm, but I would find out for them. They told me, "Never mind, don't do anything about it." So I asked—when Kettlewell was leaving I says, "By the way, Mr. Kettlewell, do you know a firm called Lyman-Evans & Company," and he says, "Why, yes, they are a firm in St. Louis."

Q. Did you have any other conversation with him?

A. No, sir, that was all.

Q. Now, this conversation that you had at the Navy Pay office, that occurred—

Mr. SHIPLEY.—Mr. Schlesinger, it was the Storekeeper's office.

Mr. SCHLESINGER.—At the storekeeper's office, occurred about when?

A. Occurred the previous day. That was over at the navy yard.

Q. And with whom was that conversation had?

A. It was directly with Mr. Brown.

Q. He asked you whether you know of such a con-

(Testimony of Emar Goldberg.)

cern dealing in metals?

A. Yes, he asked me about the price of ferromanganese, and if I knew of such a concern dealing in metals, and so on.

Q. And he knew that the Great Western Smelting & Refining Company had branches all over this country, did he not? A. Yes, sir. [664—613]

EMAR GOLDBERG, direct examination (resumed).

(By Mr. SCHLESINGER.)

Mr. ALLEN.—It is stipulated, your Honor and Gentlemen of the Jury, by and on behalf of the defendants, that Mr. Fowler, who was yesterday called as a witness, if recalled to the stand, would testify that the Fowler Metal Company, whatever concern it is, had never filed at any place in the State of Washington, any certified copy of Articles of Incorporation, and never filed any certificate of partnership or any other declaration which would inform any other person in the State of Washington of their purpose or desire to do business in this case.

Mr. SCHLESINGER.—That is the fact, subject to the objection of materiality.

Q. Mr. Goldberg, I will show you a letter, upon the letter-head of W. A. Corder, and bearing date August 20, 1907, addressed to the Great Western Smelting and Refining Company and signed W. A. Corder Company, per W. A. Corder. Did you receive that letter, at your usual place of business, in due course? A. Yes, sir.

Mr. SCHLESINGER.—If your Honor please, we

(Testimony of Emar Goldberg.)

will now offer this in evidence.

Mr. ALLEN.—No objection.

(Whereupon said letter was introduced in evidence and marked Defendants' Exhibit "A-28.")

Q. Did this letter indicate the understanding, as it then existed, between the Great Western Smelting and Refining Company and W. A. Corder Company?
[665—614] A. It did.

Q. I will show you a letter, upon the letter-head of the Navy Yard, Puget Sound, Washington, bearing date October 10, 1907, and purporting to have been signed by Jonathan Brook, Paymaster, U. S. Navy, General Storekeeper. Did you receive that letter in due course of mail, on or about its date?

A. Yes, I received that letter.

(Whereupon said letter was marked Defendants' Exhibit A-29 for identification.)

Mr. ALLEN.—We object to this on the ground it is incompetent, irrelevant and immaterial, and has no possible bearing upon any matter now pending before the jury.

By the COURT.—The letter says this material is urgently needed for a very important work, and I think, standing alone, the letter is not material, if there is nothing else to be connected—

Mr. SCHLESINGER.—I desire to connect it up by showing that to have been the usual custom and the same conditions obtained to the zinc in question.

By the COURT.—OBJECTION SUSTAINED:
EXCEPTION ALLOWED. You may reoffer it.

(Testimony of Emar Goldberg.)

Q. I will show you another letter dated Navy Yard, Puget Sound, Washington, April 29, 1908, and signed by Ray Spear, Paymaster of the U. S. Navy, General Storekeeper, and addressed to the Great Western Smelting and Refining Company. I will have you please examine that letter and state whether or not it was received by you in due course of business.

A. That came through the mails in the regular course of business. [666—615]

Mr. SCHLESINGER.—We offer that in evidence.

Mr. ALLEN.—I have no objection to that.

(Whereupon said letter was admitted in evidence, marked Defendant's Exhibit A-30, and read to the jury.)

Q. I will show you a letter dated April 15, 1908, and purporting to have been signed by Ray Spear and addressed to the Great Western Smelting and Refining Company. Did you receive that letter in due course of mail?

A. This letter came to our office in the regular course of business.

Q. Did you invite the sending of that letter?

A. I did not.

Mr. SCHLESINGER.—We will now formally offer that particular letter in evidence.

Mr. ALLEN.—Does it relate to any matter already in evidence?

Mr. SCHLESINGER.—I think so.

Mr. ALLEN.—On the statement of counsel it does

(Testimony of Emar Goldberg.)

have that relation, I don't object.

Mr. SCHLESINGER.—If it shouldn't I will consent it may go out. That is my understanding.

(Whereupon said letter was admitted in evidence, marked Defendants' Exhibit A-31, and read to the jury.)

Q. I will call your attention to a paper in print, captioned for your bookkeeper and invoice clerk, and signed Ray Spear, Pay Master, United States Navy, General Storekeeper, and ask you whether or not you received that in due course of business?

A. That came to our office in the regular mail.

Mr. SCHLESINGER.—We will offer this, have this identified and then [667—616] formally offer it in evidence.

(Whereupon said letter was marked Defendants' Exhibit A-32 for identification.)

Mr. SCHLESINGER.—I understand you admit, do you, Mr. Allen, that the printed document was sent to all merchants and contractors having business with that Navy Pay Office?

Mr. ALLEN.—Mr. Spear states that is a custom of the office. I will state to the jury that is not a personal letter.

Mr. SCHLESINGER.—That was not a letter personally to the Great Western Smelting & Refining Company?

Mr. ALLEN.—No.

Mr. SCHLESINGER.—Could you let me know, Mr. Spear, please, about the probable time of the sending out of this communication?

(Testimony of Emar Goldberg.)

Mr. SPEAR.—As to this particular year?

Mr. SCHLESINGER.—No, all of them.

Mr. SPEAR.—I think it probably was a form kept in the office and used every time a new dealer appeared on the scene, who wasn't familiar with the Government's methods of doing business.

Mr. SCHLESINGER.—Sent out from time to time?

Mr. SPEAR.—Yes, sir, simply a form.

Q. I call your attention, Mr. Goldberg, to what purports to be a carbon copy of a letter signed "Great Western Smelting & Refining Company and addressed to Mr. Ray Spear, Paymaster, United States Navy Yard, Bremerton, Washington." Did you send the original of that carbon copy to Mr. Ray Spear, in due course of business?

A. Yes, sir, that was sent to the Navy Pay Office in the regular course of business—not to the Navy Pay Office, to Mr. Spear at the navy yard.

(Whereupon said copy of letter was marked Defendants' Exhibit A-33 for identification.) [668—617]

Mr. ALLEN.—Without knowing from Mr. Spear whether the original was ever received by him, I would object to this upon the ground it is incompetent, irrelevant and immaterial.

By the COURT.—I don't think it is material. He has already testified about it.

Mr. SCHLESINGER.—This is corroborative.

By the COURT.—OBJECTION SUSTAINED:
EXCEPTION ALLOWED.

(Testimony of Emar Goldberg.)

Q. I will now show to the witness a letter dated February 6, 1908, addressed to the Great Western Smelting & Refining Company and signed by J. H. Walsh, Assistant Naval Constructor. Did you receive that letter in due course of business?

A. That letter came to the office through the mails, in the regular course of business.

(Whereupon said letter was marked Defendants' Exhibit A-34 for identification.)

Mr. SCHLESINGER.—We offer this letter in evidence.

Mr. ALLEN.—We object to this on the same grounds stated before, it is incompetent, irrelevant and immaterial, and has no possible bearing on any one of the issues submitted to this jury.

By the COURT.—I think this may go in.

(Whereupon Defendants' Exhibit A-34 for identification was admitted in evidence.)

Q. Did you make any reply likewise, in due course of events, to that particular letter?

A. We answered that letter on probably the same day it was received.

Q. I will show you a letter bearing date February 10, 1908, [669—618] addressed to the same Mr. Walsh, and signed by the Great Western Smelting & Refining Company. Is that a carbon copy of the one that you sent? A. No, sir.

Q. It is not a carbon copy?

A. No, that was a carbon copy of a letter on a different occasion, when another inquiry came to the

(Testimony of Emar Goldberg.)

same office. I think you have that answer in the files.

Q. Then I call your attention to another letter, or what purports to be a carbon copy of a letter, and ask you whether or not that was sent by you in due course of events?

A. Yes, sir, that was sent in the regular course of business, in answer to an inquiry.

Q. From whom did that inquiry come?

A. From the officer to whom it is addressed.

Q. Did you invite such an inquiry?

A. No, sir, we had no idea of it.

Q. Did you enter into any combination, conspiracy or agreement with Mr. Walsh, or any other officer there, for advance information?

A. No, sir, I don't know that I am even acquainted with Mr. Walsh. I might have met him, but I am not certain.

Q. About how many times will you say that you received letters of similar import?

A. Oh, we received many letters of that character. Any officer in the yard that was—that needed any particular item, wouldn't hesitate to telephone over to our office or write to us. That probably happened a hundred times, telephoned or wrote. They more often telephoned than wrote letters.

Mr. ALLEN.—That is on another transaction. In the light of your [670—619] Honor's ruling, I have no objection to it.

(Whereupon Defendants' Exhibit A-35 for identification is admitted in evidence.)

(Testimony of Emar Goldberg.)

Q. Did you have any conversation or communication with either Mr. Meyers or Mr. Kettlewell concerning that transaction, as to advance information?

A. There was no occasion to have any conversations with Mr. Meyers or Mr. Kettlewell concerning that matter. The letter was all the information that we required.

Q. Did you ever have any difficulty in securing information as to probable purchases on the part of the Navy Department?

A. No trouble whatever. If any department of the Navy Yard required anything, they wouldn't hesitate one second to tell you what they wanted, and when they would want it, or the quality or character of material.

Q. I will call your attention to a carbon copy of a letter addressed to Mr. R. L. Drake, Puget Sound Navy Yard, Bremerton, Washington, under date, your Honor, of December 16, 1908, and signed by the Great Western Smelting & Refining Company. I will ask you primarily, who is Mr. R. L. Drake?

A. I don't recall. He is one of the officers of heads of departments over at the navy yard at that time. The letter probably will show.

Q. Were you in any combination or conspiracy with Mr. R. L. Drake whereby your concern was to receive advance information?

A. No, sir, I don't know that I remember Mr. Drake.

Q. I will show that to the witness and ask him whether he identifies that as being a carbon copy of

(Testimony of Emar Goldberg.)

a letter forwarded in due course of mail?

A. I recall that mail. There was considerable correspondence in [671—620] regard to that.

(Whereupon copy of letter is marked Defendants' Exhibit A-36 for identification.)

Mr. ALLEN.—Does this have reference to any transaction or folder offered in evidence, or any other matter?

Mr. SCHLESINGER.—I can't tell you, because I don't know.

Mr. ALLEN.—I object to it for the same reason, all on the same basis.

By the COURT.—I don't think that this is material.

OBJECTION SUSTAINED: EXCEPTION ALLOWED.

Q. Do you know whether Mr. Drake is still in the employ of the Government? A. I do not.

Q. Do you know whether Mr. Walsh is still in the employ of the Government? A. I do not.

Q. Had you sold the Government zinc prior to May, 1908? A. Yes, sir.

Q. Your concern? A. Yes, sir.

Q. At various prices? A. Various prices.

Q. What were those prices, generally speaking?

A. Ranging as high as sixteen cents a pound.

Q. I will offer them in evidence. I will show you a public bill dated January 27, 1908, a number 615. I will ask you whether or not that is a copy of the public bill given to the Government upon that occasion.

(Testimony of Emar Goldberg.)

A. Yes, sir, this is a copy of the public bill calling for the [672—621] delivery of some zinc at sixteen cents a pound.

Mr. SCHLESINGER.—We will offer this in evidence.

(Whereupon said bill was marked Defendants' Exhibit A-37 for identification.)

Mr. ALLEN.—Do you know the requisition, the number?

A. I think the requisition is already in evidence. I didn't notice the number.

Mr. ALLEN.—I would like to know the number of the requisition.

Mr. SCHLESINGER.—The number of the requisition is 193.

Mr. ALLEN.—We have no objections.

(Whereupon Defendants' Exhibit A-37 for identification was admitted in evidence.)

Q. Was this bill paid in due course?

A. Paid on the date stamped.

Q. Did you ever have any complaint from either the Department here or the Department in Washington, with respect to that particular bill?

A. No, sir, there was a rejection of 1900 and some odd pounds and afterwards purchased by the Government on another requisition.

Q. At how much? A. At 12½ cents a pound.

Q. I will now show you what purports to be a copy of a public bill for 1478 pounds of zinc plates for boilers. I will ask you whether or not you received that in due course of business.

(Testimony of Emar Goldberg.)

A. That was a public bill covering the sale of some zinc on requisition 169, inspection call 1142. [673—622]

(Whereupon said bill was marked Defendants' Exhibit A-38 for identification.)

Q. Was this bill paid in due course?

A. It was paid in the regular course of business.

Q. Did you ever receive any complaint?

A. Never received any.

Q. From this Department or the Department at Washington, either as to quality or price covering this transaction?

A. There was nothing more heard of that transaction after the invoice was paid.

Mr. ALLEN.—No objection.

(Whereupon Defendants' Exhibit A-38 for identification was admitted in evidence.)

Q. I will show you another public bill, or what purports to be a copy of a public bill, dated January 7, 1908, and calling for 3402 pounds of zinc at sixteen cents per pound. Did you receive that copy in due course of business?

A. Yes, sir, that was received in the regular course of business.

(Whereupon said copy of bill was marked for identification Defendants' Exhibit A-39.)

Q. Was this bill—which we now formally offer in evidence—any objection to it—Requisition No. 154—

Mr. ALLEN.—No objection.

Q. Was this bill paid in due course of business?

A. It was paid in the regular course of business.

(Testimony of Emar Goldberg.)

Q. Did either the Department in Seattle or Bremerton or the Department at Washington, D. C., ever make any complaint as to [674—623] quality, quantity or price covering that particular requisition? A. No, sir, nothing was said about it.

Q. I call your attention to what purports to be a copy of a public bill dated January 1, 1908, and calling for 2,795 pounds of zinc plates and for the sum of \$447.20. Did you receive that copy in due course of business?

A. That copy was received in due course of business.

Q. Was that bill paid in due course of business?

A. It was paid as stamped here, on January 8th.

Q. Did you ever receive any complaint from any one of the departments, or heads of the departments, either as to quantity, quality or price, covering that transaction?

A. Never was heard about, that is after it was paid.

Q. Any complaint made that the price was unconscionable or unreasonable?

A. No, sir, nothing was said in regard to the price.

Q. At any time? A. At any time.

Q. And is it not a fact that the transactions covered by these requisitions precede the one now under investigation, in point of time?

A. They precede the one now under investigation by several months.

Q. Did you ever enter into any conspiracy or combination with any of the officials in Washington—

(Testimony of Emar Goldberg.)

Mr. ALLEN.—Tell me the number of the requisition.

Mr. SCHLESINGER.—That is No. 153.

Q. Did you ever enter into any combination, conspiracy or agreement with any of the officials in Washington, D. C., as to any of the matters covered by these requisitions?

A. I don't know any of the officials in Washington, never met them. [675—624]

(Whereupon said bill was introduced in evidence and marked Defendants' Exhibit A-40.)

Q. And did you prevent the consideration of these various requisitions and bids by the officials in Washington, D. C.?

A. I don't see how I could have anything whatever to do with Washington, D. C., in any possible way, shape or form. I have never been in Washington. I don't know any of the officials in Washington.

Q. I call your attention to a bill dated La Salle, Illinois, February 4, 1910, addressed to the Great Western Smelting & Refining Company, by Matheson & Heggler, where they charge on 8,131 pounds of zinc plates at \$7.40. Did you receive that bill in due course of business?

A. That invoice was received in the regular course of business.

(Whereupon said invoice was marked Defendants' Exhibit A-41 for identification.)

Mr. ALLEN.—I object to the introduction of this in evidence, on the ground it is incompetent, irrelevant and immaterial.

(Testimony of Emar Goldberg.)

By the COURT.—I think the objection should be sustained. It is two years afterwards. OBJECTION SUSTAINED: EXCEPTION ALLOWED.

Q. I will show you a letter, Navy Yard, Puget Sound, Washington, February 7, 1908, and signed J. H. Walsh, Assistant Naval Constructor, U. S. N. Did you receive that letter in due course of business?

A. Yes, sir, we received this letter in the regular course of business.

Q. And did you make reply thereto?

A. We replied to this letter. The other letter you showed me was [676—625] the answer to this, and this copy is an answer to the first letter.

Q. In other words—

A. They have gotten into the wrong place.

Mr. SCHLESINGER.—We will have this marked for identification and formally offer it in evidence.

Mr. ALLEN.—Our objection goes to the same point, incompetent, irrelevant and immaterial. There is no doubt but what they bid on all kinds of material there.

By the COURT.—I think they may go in.

(Whereupon said letter was introduced in evidence and marked Defendants' Exhibit A-42 and read to the jury.)

Q. Did you invite from Mr. Walsh the writing of any such communication? A. No, sir.

Q. Did you seek the advance information therein contained?

A. Not by writing any letter or asking for the information or in any other way. That letter orig-

(Testimony of Emar Goldberg.)

inated in the office of the man whose name is signed to it. I had no idea he was going to write to us at all.

Q. Were you in any conspiracy or combination with him to receive that information?

A. No, sir. It was public information. He might have written to a number of other people at the same time.

Q. I will call your attention to a letter dated October 5, 1907, addressed to the Great Western Smelting & Refining Company and signed W. A. Corder Company. Did you receive that letter in due course of business? [677—626]

A. Yes, sir, we received that letter in the regular course of business from the W. A. Corder Company.

(Whereupon said letter was marked Defendants' Exhibit A-43 for identification.)

Q. Do you recognize the signature as that of Mr. Corder?

A. That is the signature, yes, that is the signature of Mr. Corder.

Q. Does that letter speak the truth as it then existed?

A. That is the record of the sales of the Corder Company on the zinc owned by both companies for that month.

Q. Did you ever have any complaint about the quality of the zinc furnished by you?

A. No complaint as to quality for rolled zinc. We never received any complaint.

Q. I call your attention to an order for supplies

(Testimony of Emar Goldberg.)

dated December 3, 1907, and ask you whether or not you received that order in due course of business, and do you recognize the signature of Robert H. Orr appearing on the bottom of it?

A. This is the order that is covered afterwards by one of those public bills.

Mr. ALLEN.—That relates to one of the exhibits, requisition No. 153. No objection.

(Whereupon said order is admitted in evidence and marked Defendants' Exhibit A-44.)

Q. Did that statement which I have just read appear upon nearly all of these orders for supplies?

A. Yes, sir, that statement was on practically every order that we received for zinc. [678—627]

Q. In other words, you had to furnish zinc in accordance with the specifications given you by the Government?

A. The Government named certain specifications on articles, and it was necessary to live right up to the letter of those specifications or the material would be rejected.

Q. You mean by that the material would have been returned to you and not paid for by the Government? A. Yes, sir.

Q. Now, in the event of that happening, did you have any right to return that same material to the factory from whence you bought it?

A. When you once bought zinc from a zinc factory like Matheson & Heggler, you bought it and that was the end of it, so far as they were concerned.

Q. Can you tell these gentlemen why it is that

(Testimony of Emar Goldberg.)

the Matheson & Heggler Company declined to sell zinc plates to the Government, if you know?

Mr. ALLEN.—We object to that as being incompetent, irrelevant and immaterial.

By the COURT.—OBJECTION SUSTAINED: EXCEPTION ALLOWED.

Q. I call your attention to what purports to be a notice bearing the caption “Important” and signed “Matheson & Heggler Zinc Company.” Did you ever before see that notice?

A. I have seen that notice pinned to the letters that I received from Matheson-Heggler Zinc Company.

Mr. SCHLESINGER.—I ask to have it marked for identification.

(Whereupon said notice was marked Defendants’ Exhibit A-45 for identification.)

Mr. ALLEN.—I object to this on the ground it is incompetent, [679—628] irrelevant and immaterial, and repetition of something that is already in evidence in the case. This little printed slip has already been offered in evidence, as I understand it.

Mr. SCHLESINGER.—I am going to follow it with another question.

By the COURT.—It is the same notice attached to the other order?

Mr. SHLESINGER.—Yes, your Honor, it is.

By the COURT.—Let it go. Proceed.

(Whereupon Defendants’ Exhibit A-45 for identification was admitted in evidence and read to the jury.)

(Testimony of Emar Goldberg.)

Q. Was that fact taken into consideration by the Great Western Smelting & Refining Company in fixing its prices in its dealings with the Government?

A. Why, it was undoubtedly taken into consideration by everyone who ever does any business with the Government.

Q. Did you ever attempt, or your concern, to prevent the purchase by the Government of zinc plates from any of the factories in the east?

A. There is no possible way of our preventing the United States Government from doing as it pleases.

Q. Did you ever enter into any agreement or combine with any of these factories to prevent the sale to the United States Government of zinc plates?

A. The first I heard of the—

Q. Answer yes or no. A. No, sir.

Q. I will call your attention to a paper entitled "Notice of rejected articles," in large print, and bearing date January 21, 1908. I will ask you whether or not you received that notice in due course of business. [680—629]

A. Yes, sir, that notice came to our office in the regular course of business.

(Whereupon said notice was marked Defendants' Exhibit A-46 for identification.)

Mr. ALLEN.—Does that refer to an exhibit offered?

Mr. SCHLESINGER.—Yes, I think it does. You will know by looking at it.

Mr. ALLEN.—No objection.

(Whereupon Defendants' Exhibit A-46 for identi-

(Testimony of Emar Goldberg.)

fication was admitted in evidence.)

Q. Did you have any agreement or combination with the General Storekeeper, or anybody else, that blanks of that character should be printed or distributed, as the case may require? A. No, sir.

Q. And do you know whether or not they had these blanks printed for the benefit of the Great Western Smelting & Refining Company?

A. We had nothing to do with the matter.

Q. I call your attention to the words, "in excess" appearing under the caption, "Cause of Rejection." What became of the quantity of zinc originally rejected?

A. The zinc on that particular rejection or in that particular proposal was afterwards accepted by the Government at 12½ cents a pound.

Q. Won't you kindly explain that a little more in detail.

A. Do you want me to explain how I happened to sell it over—

Q. Yes.

A. When we originally received that order, or the award, the pay [681—630] office called us up. There seemed to be no zinc in town and they were buying considerable zinc. I told Mr. Kettlewell over the phone that we had about six thousand pounds. He said, "Send it over," so we sent the six thousand pounds over. The award came in—I don't remember whether we received a proposal the day that we sent it out or not. I am under the impression I telephoned up to him for the number,

(Testimony of Emar Goldberg.)

and when the award came in it called for four thousand pounds, but as he had told me to send over all we had, which was six thousand, I paid no more attention to it until this notice of excess delivery and rejection reached us. When that notice of rejection reached our office, I phoned up to Mr. Kettlewell and I said, "Mr. Kettlewell, this excess two thousand pounds has been rejected. You told me to send six thousand." He said, "No, you must have misunderstood me. I told you that the award called for four thousand pounds." When he said that, I thought perhaps I had misunderstood him, although I was pretty positive I had not, and I didn't do any more about it, thinking that the Government would take it up later. That is how it happened that that zinc was left there at the yard and afterwards accepted. We afterwards put in a bid, and it was accepted by the Government in some way at 12½ cents. I don't recall exactly how long after that.

Q. I will call your attention to a paper entitled "Notice of Award," and signed by E. B. Rogers, Paymaster General, U. S. N., under date of April 24, 1908, and also to a copy, printed copy attached thereto. Did you receive those documents in due course of business?

A. Yes, those documents reached us in the regular course of business.

(Whereupon said papers were marked Defendants' Exhibit A-47 for identification.) [682—631]

Mr. SCHLESINGER.—I will offer in evidence these documents.

(Testimony of Emar Goldberg.)

Q. I show you a letter dated February 17, 1908, and signed by Mr. Ray Spear and addressed to the Great Western Smelting & Refining Company. Did you receive that in due course of business?

A. This was received in the regular course of business.

(Whereupon said letter was marked Defendants' Exhibit A-48 for identification.)

Mr. SCHLESINGER.—I might state the purpose of that, if your Honor please, is to show the general procedure—the purpose of that is to show the general course of business in that office. (Referring to A-47).

Mr. ALLEN.—With that explanation of counsel, I don't know that I object to it, if it is just for the purpose of showing the general procedure there.

(Whereupon Defendants' Exhibit A-47 for identification was admitted in evidence and read to the jury.)

Mr. ALLEN.—I want to ask one question to prove the authenticity of this. Mr. Spear, you were Paymaster at Bremerton on the date February 17, 1908, were you?

Mr. SPEAR.—Yes, sir.

Mr. ALLEN.—I want you to take a look at that instrument. Is that your signature?

Mr. SPEAR.—No, sir, on February 17, I was in the eastern part of the United States, not at the station at all.

Mr. ALLEN.—Did anyone in your office have any authority to sign your name at that time?

(Testimony of Emar Goldberg.)

Mr. SPEAR.—No, sir.

Mr. ALLEN.—Does that “M” mean anything to you? [683—632]

Mr. SPEAR.—It looks like Mr. Meyer, I would take it.

Mr. ALLEN.—With that explanation we will let it go before the jury.

Mr. MORRIS.—Who was in charge of the Storekeeper’s office at the date of this exhibit 47, when it was written?

Mr. SPEAR.—I am mistaken about the question. In 1908 I was on the station. I was thinking of 1907.

Mr. ALLEN.—There was no rubber stamp authorized in your office?

Mr. SPEAR.—Purely as a rubber stamp. It is no ink, no facsimile.

Mr. MORRIS.—I asked a question and I want it answered. Mr. Spear, directing your attention to Defendants’ Exhibit A-48, being a letter of February 17, 1908, I would like for you to state who, if anyone, was in charge of the Storekeeper’s office during the time you were absent?

Mr. SPEAR.—I amended my former statement to the effect, on that particular date I was present. I was mistaken as to the date at the time I made my first statement. I was in charge of that office on that date, so far as I recollect. I might have been over in Seattle on that particular date. I am not sure as to that.

Mr. MORRIS.—Were you at the Storekeeper’s

(Testimony of Emar Goldberg.)

office at Bremerton at the time this letter was written and signed, if you know?

Mr. SPEAR.—Officially I was in charge of that office.

Mr. MORRIS.—But physically you might have been in Seattle?

Mr. SPEAR.—Yes, sir.

Mr. ALLEN.—On this date there was no authorized rubber stamp simulating your signature, authorized or permitted in your office?

Mr. SPEAR.—I never allowed a facsimile stamp in the office.

Mr. ALLEN.—Isn't it, as a matter of fact, prohibited under the statute?

Mr. SPEAR.—As a matter of policy. [684—633]

Mr. ALLEN.—With that explanation, no objection.

(Whereupon Defendants' Exhibit A-47 was admitted in evidence and read to the jury.)

(By Mr. SCHLESINGER to Witness.)

Q. Did you make the redelivery referred to in that letter?

A. We either made the redelivery or were penalized, one of the two. I don't recall the transaction, but we must have either made the redelivery or been penalized.

Q. And was a portion of the requisition rejected, as the letter indicated?

A. Must have been rejected or we never would have received such a letter.

Q. Referring to that transaction, the Great West-

(Testimony of Emar Goldberg.)

ern Smelting & Refining Company was paid only for the articles that the Government ultimately accepted?

A. That is all anyone ever was paid for, was what the Government accepted. If you delivered an article over there, and they accepted half of it, you were paid for half. If they rejected the entire quantity, you wasn't paid anything on that particular shipment; you was simply paid for what the Government agreed to accept.

Q. You have been in court since the commencement of this trial, of course? A. Yes, sir.

Q. And you heard the testimony of Mr. Kettlewell? A. Yes, sir.

Q. I will call your attention to the testimony of Mr. Kettlewell, given upon page 9 of this transcript. He said, referring to you, "He made no reference to this particular transaction, but he called me out in the hall and handed me \$100." Did that— [685—634] A. That never occurred.

Q. Did you ever hand him \$100?

A. I never handed him \$100.

Q. In any hall or any place? A. No, sir.

Q. He further said that you said, "This will straighten up all these old matters—this will straighten up all these old matters, and there is a big requisition coming through; Meyer is going to make a big requisition as soon as he can, and he said, I want everything straightened up before that comes through." Did you have any such conversation with Mr. Kettlewell at that unnamed time and

(Testimony of Emar Goldberg.)

at that unnamed place?

A. I never had any such conversation as that with Mr. Kettlewell at any time. There was never any occasion for any such conversation as that, or any conversation that would be anything like that.

Q. Did you have any old matters with Mr. Kettlewell or Mr. Meyer prior to that time?

A. No, sir, there were no old matters or new matters or any other kind of matters for me to settle with Mr. Kettlewell.

Q. Do you know what he referred to in his testimony that you said, "This will straighten up all these old matters."

A. I don't know what he was talking about, because there never was any such conversation as that between Kettlewell and myself.

Q. Mr. Kettlewell further testified upon the same page: "Yes, he told me you told him that you would divide the profits on a basis of twenty per cent." Did you tell him that?

A. I never made any such remark as that to him or anybody else.

Q. And then he further testified, adding to it—if I may interpolate, he further testified, "On the basis of twenty per cent to Meyer and twenty per cent to him," twenty per cent to Meyer and twenty per cent to you. Did you tell him that you would give twenty per [686—635] cent of either gross or net profits to Mr. Meyer and twenty per cent to him, Kettlewell?

A. We never had any such conversation as that,

(Testimony of Emar Goldberg.)

in any way, shape or form.

Q. Did you ever render him a statement, showing what the gross or net profits of that branch concern was, for any length of time or for any transaction?

A. It was none of his affairs as what the profits were for any length of time, or any time or on any transaction.

Q. Did you ever inform him as to what your gross or net profits were? A. No, sir.

Q. Now, to fully cover it, did you agree with him at that time to give away forty per cent of the net or gross profits of the branch of the Great Western Smelting & Refining Company?

A. There never was any such kind of agreement or any other agreement with him.

Q. I will call your attention to the testimony given by Mr. Kettlewell in answer to a question by Mr. Riddell. "Q. Before this requisition came through, did Mr. Goldberg say anything to you about it" and the answer was, "I believe I said when he paid me that \$100 he told me this requisition would come through." You again testify that did not occur?

A. I never had any conversations of any character of that kind.

Q. Mr. Kettlewell testified upon page 18: "Well, when we got this requisition, I phoned Mr. Goldberg and told him it was there." Did you receive from Mr. Kettlewell at that unnamed time any such telephonic message?

A. Not in regard to any requisition. On the day

(Testimony of Emar Goldberg.)

that I received that proposal, someone telephoned to our office and told us that [687—636] a proposal was there for fifty thousand pounds of zinc. I don't know now whether it was Mr. Kettlewell or someone else in that office. I went up to the office and I got the proposal. That was not the requisition. I didn't know anything about that until the day I received it.

Q. Mr. Kettlewell further testified upon the same page: "The proposal to Corder & Company was mailed direct and several others. Some of them I took around to dealers myself and some I handed Mr. Goldberg." Did he hand you any proposals?

A. No, sir, outside of the one that I asked for, and I don't know now whether I received that proposal from him or from the clerk in the office.

Q. Did you ask him for an extra set of proposals?

A. No, sir, I never asked him for an extra set of proposals.

Q. Did he hand you the proposal of P. McManus, or show it to you? A. No, sir.

Q. I will ask you, did you ever before see the proposal of P. McManus.

A. I never saw it until I saw it in the courtroom here the other day.

Q. Mr. Kettlewell further testified, "I called particular attention to the fact that we had to have this right away, five days. They, of course, couldn't furnish it within that time." Did he make any such communication to you?

A. He made no communication to me. He just

(Testimony of Emar Goldberg.)

simply handed me the proposal, and I saw what was written on the proposal. It wasn't necessary for him to call my attention to that. The face of the proposal showed that. I would have known it without his calling my attention to it.

Q. How did Mr. Meyer generally address you in your official relations with him? [688—637]

A. Mr. Meyer has always addressed me as "Mr. Goldberg," not only in official relations, or if he was to meet me on the street, or any place else. He has never addressed me any other way than Mr. Goldberg.

Q. Did he ever call you "Jimmy"?

A. He never called me "Jimmy," or any other nickname. He isn't the kind of a man who would talk like that, anyhow.

Mr. ALLEN.—You are talking about Meyer now?

A. Yes.

Q. You have testified, I believe, that you called for that check on the morning of May 26th?

A. No, I testified that I called for the check right after lunch.

Q. At that time it was not given to you?

A. No, sir.

Q. You have been charged in this indictment with having entered into a conspiracy to defraud the Government out of money in this transaction, and to gain for yourself and others unconscionable profits. Did you enter into any such conspiracy or combine or have any such agreement?

A. I never had any such agreement.

(Testimony of Emar Goldberg.)

Q. Did you have any agreement or conspiracy to divide profits with any of these parties?

A. I never had any agreement or conspiracy or arrangement to divide any profits with anyone, in no way, with that office or any other office, excepting the profits that we were to divide with Mr. Corder. That was a business agreement that was made irrespective of the United States Government entirely. It was an agreement that was entered into long before we were ever doing any business with the United States Government, and it was continued when the Government started to buy zinc plates from us. [689—638]

Q. Was that agreement entered into with the sanction of the Great Western Smelting & Refining Company? A. Why, certainly it was.

Q. Did it appear upon your books?

A. It appeared upon our books. Every item appeared upon our books and was reported every day.

Q. After this indictment had been sent by you to the Great Western Smelting & Refining Company of San Francisco and returned to you, did you read it? A. Yes, sir.

Q. Are you guilty of any of the things stated in that indictment?

A. No, sir, I am not guilty of any of the things stated in that indictment, outside of the fact that we sold the zinc to the United States Government. We sold and delivered the zinc, there is no question about that part.

Q. Have you profited by any of the transactions

(Testimony of Emar Goldberg.)

referred to to the extent of a single five cent piece?

A. No, sir.

Q. Did you discuss with Mr. Kettlewell this proposition of five days delivery?

A. No, sir, that was never discussed with Mr. Kettlewell.

Q. You told me, putting this more in the form of an inquiry, you told me this morning you wanted to explain something about a \$336 check. It is not quite plain to me. I just want to have him give the explanation, if he will.

A. One of those checks that are in evidence here is a \$336 check. I don't know what the intention—what was done with that check, but that check was deposited to my account in the National Bank of Commerce.

Q. For what purpose was it so deposited?

A. My own use, but it was not drawn out in the shape of a \$350 [690—639] check, either.

Q. What evidence have you of that fact?

A. My account at the National Bank of Commerce.

Q. And he has been subpoenaed, the proper official?

A. He is prepared to come up here at any time.

Q. I will ask you just one additional question. It is the final one, your Honor. Had you anything on earth to do with the matter of Kettlewell's securing his responsible position with the Government?

A. Why, certinly not. How would it be possible for me to have anything to do with Mr. Kettlewell securing his position from the Government?

(Testimony of Emar Goldberg.)

Q. Did you suggest his employment? Did you know him?

A. He was employed by the Government before I ever knew him or met him.

Cross-examination by Mr. ALLEN.

Q. You stated in your direct examination that you are the manager of the Great Western Smelting & Refining Company; is that right?

A. No, I am technically known as the State Agent, but he is generally called "manager."

Q. State Agent of the Great Western Smelting & Refining Company, a corporation, is that right?

A. Yes, sir.

Q. I believe you stated in your direct examination that it was a corporation organized under the laws of Maine; is that right? A. That is true.

Q. Mr. Schlesinger stated that he thought it was a corporation organized under the laws of the State of Illinois. Is Mr. [619—640] Schlesinger right or are you right?

A. The Great Western Smelting & Refining Company has gone through various stages.

Q. Yes, I think so.

A. The present Great Western Smelting & Refining Company is organized under the laws of the State of Maine.

Q. Are you sure of that fact?

A. Yes, I am sure of the fact, that the Great Western Smelting & Refining Company to-day is organized under the laws of the State of Maine, although I will say I don't know but mighty little about the

(Testimony of Emar Goldberg.)

internal workings of the Great Western Smelting & Refining Company.

Q. I call your attention to—you can take a look at it and tell me what it is, if you will. Is that page before you known as the certificate of the Secretary of State of the State of Washington, of recent date—of last month, or last year, certifying to the authenticity of the documents included therein? By reference to the documents included therein, tell the jury under what State laws this corporation really was created in 1908. Calling his attention to the last page of it—I call your attention on the second from the last page of this certificate from our own Secretary of State. Does that state accurately the fact that this corporation is a corporation of the State of California, not of the State of Maine or Illinois?

Mr. MORRIS.—I object to the question. He doesn't know whether it states facts or not. That paper states for itself.

Q. That paper—all right, state the fact.

Mr. KERR.—This witness doesn't know that.

By the COURT.—I think the paper would be the best evidence.

Mr. KERR.—If it is material at all, this witness hasn't anything to do with it. It is a matter the attorneys handle, I handled here.

Q. State to the jury whether or not, having refreshed your [692—641] recollection, it is a corporation organized under the laws of the State of California.

A. It is not a corporation organized under the laws

(Testimony of Emar Goldberg.)

of the State of California to-day. It might have been at this time.

Q. It was then in 1908. That is the time we have been talking about during all this period of time?

A. But I wasn't asked that.

Q. You are willing to say now at that time it was a corporation organized under the laws of the State of California?

Mr. KERR.—If that is material, we re-incorporated this company, and I handled it for the Great Western Smelting & Refining Company, since that date.

Q. In other words, then, your original declaration that the corporation was a corporation in 1908 of the State of Maine, is probably not true, if you made that statement?

A. I never made that statement. I said that the Great Western Smelting & Refining Company is a corporation organized under the laws of the State of Maine.

Q. You are then referring to the present existence of the corporation? A. Yes, sir.

Q. Then, as you seem to know so much about the past history of the corporation, state to the jury in how many States this corporation has been organized from time to time, if you know? A. I don't know.

Mr. KERR.—This witness isn't pretending to know.

Q. In other words, although you are manager of this Great Western Smelting & Refining Company, now doing business here in this State, and has been

(Testimony of Emar Goldberg.)

doing business here since long prior to 1908, you can not now tell the jury under what States and by what authority they have done business in the city of Seattle, is that [693—642] right?

Mr. KERR.—We object to that on the ground it is a supposition. This witness hasn't testified he was general manager for the Great Western Smelting & Refining Company. He has testified he was acting in that capacity at this branch in the city of Seattle, and that is all he has testified to. He has already testified he was not on the Board of Trustees, he was not an officer, he had nothing to do with the corporate management of the affairs of this company.

By the COURT.—If he knows he can tell. OBJECTION OVERRULED: EXCEPTION ALLOWED.

Q. Answer the question.

A. What was the question?

Q. (Question read.)

A. I misunderstood your question in the first place. I thought you meant—intended to ask me in what States the Great Western Smelting & Refining Company had been doing business.

Q. No, sir; I am confining it now to the States under which, and the character of it as a corporation.

A. Well, I see. Well, the first State under which the Great Western Smelting & Refining Company was doing business in this city was California.

Q. When was that, what time, what year?

A. That was—

(Testimony of Emar Goldberg.)

Mr. SCHLESINGER.—I object to that upon the ground it is not cross-examination and not the best evidence; that the fact itself may be shown by certified copies of the Articles.

By the COURT.—If he knows, he may answer.
OBJECTION OVERRULED: EXCEPTION ALLOWED.

Q. When was that, what time, what year? [694—643]

A. I don't remember the year in which the firm was incorporated, because at first it was a special partnership on this coast.

Q. When was it a special partnership, then?

A. In 1898.

Q. When did it assume a corporate form?

A. I don't remember.

Q. You don't know under what State, then, it has incorporated, do you?

A. I am fairly certain it was incorporated under the laws of the State of California.

Q. In the first instance, then, it was incorporated under the laws of the State of California; is that true?

A. I am under the impression, but I had nothing to do with the corporate workings of the Company. That was entirely outside of my province. If they wanted me to do anything of that kind, or had any instructions for me, they mailed it to me.

Q. I want you to tell us who the officers of the corporation were the first time you had anything to do with it. Tell the year and who they were.

(Testimony of Emar Goldberg.)

Mr. SCHLESINGER.—It isn't fair to this witness to ask him when particular concerns were incorporated. You can easily get the fact by procuring certified copies of the Articles themselves. They are the best evidence.

By the COURT.—The Court has already ruled upon that. He may answer if he knows. OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. I don't recall the year. The first President on this coast must have been Mr. Alper.

Q. He is the mysterious Mr. Alper to whose numerous conversations you have testified about in the year 1908?

Mr. SCHLESINGER.—I object to that question and criticize your remark as misconduct unbecoming the prosecutor. I move the [695—644] question be withdrawn and the jury instructed to disregard it.

By the COURT.—The word "mysterious" will be withdrawn and the jury are instructed to disregard it.

Q. He is the Mr. Alper to whose numerous conversations you have testified about in the year 1908?

A. He is the Mr. Alper.

Q. Has he been connected with the firm from 1908 down continuously to the present time?

A. Yes, sir.

Q. Is he now in the State of California?

Mr. SCHLESINGER.—How in the world can he know, in Seattle, where Mr. Alper is to-day?

By the COURT.—Let him answer if he knows.

(Testimony of Emar Goldberg.)

A. I don't know.

Q. Where was Mr. Alper the last time you heard of his whereabouts?

Mr. SCHLESINGER.—I object as calling for the opinion of the witness and not being competent cross-examination, and not binding upon him.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. He was in San Francisco.

Q. When was that, when did you last hear from Mr. Alper directly or indirectly?

Mr. SCHLESINGER.—I object to that as not being proper cross-examination, not referring to any matter drawn out in the direct examination.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. Oh, it isn't more than a week or two weeks since I heard from Mr. Alper.

Q. You heard from Mr. Alper a week or two weeks ago and he was then in the city of San Francisco and in the State of California?

A. Yes, sir. [696—645]

Q. What changes, then, were made in recent years and under what laws, the laws of what State, is the corporation now incorporated, going back to the present time?

Mr. SCHLESINGER.—That refers to what you actually know, and not to what you think.

A. I have never kept exact track. It was just about this time in 1908 that some change occurred and I am under the impression it was just about that

(Testimony of Emar Goldberg.)

time that Mr. Alper became vice-president of the whole company.

Q. Haven't changes been quite frequent in the history of the Great Western Smelting & Refining Company?

A. It depends altogether on what you mean by frequent.

Q. Now, you testified yesterday on your direct examination that Mr. Kettlewell, who was clerk in the Navy Pay Office of the city of Seattle, began importuning you for money in the month of December, 1907; is that right?

A. Yes, sir, that is right.

Q. I believe you stated in the month of December, 1907, that Mr. Kettlewell wanted to borrow, I believe, \$1,000 from you at that time; is that true?

A. That is true.

Q. I believe you gave as a reason for not loaning to Mr. Kettlewell this \$1,000, or at least assigned that as a reason, that you were going in the lumber business, or shingle business; is that true?

A. No, sir; I didn't say that. [697—646]

[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants Edwin F. Meyer and Emar Goldberg. Vol. 4, Pages 453 to 646. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 14, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [698]

(Testimony of Emar Goldberg.)

E. GOLDBERG, on the stand.

Cross-examination (Resumed).

(By Mr. ALLEN.)

Q. Did you say then, Mr. Goldberg, that you were in the lumber business, and that was the reason, or words to that effect? A. Yes, sir.

Q. You told him, then, you could not loan him the money, because you had your money tied up in the lumber business; is that right?

A. Yes, sir, or words to that effect.

Q. About when was that, in the month of December, 1907?

A. I don't recall exactly when that was; it was somewhere around toward the middle of the month, I am under the impression.

Q. Calling your attention to requisition No. 153,—this is part of Plaintiff's Exhibit No. 78, calling your attention to this, Mr. Goldberg, I will ask you to take a look at the proposals submitted there. Did your concern put in a proposal at that time?

A. This seems to be a proposal of the Great Western Smelting & Refining Company.

Q. That is your proposal, is it not, and your company?

A. Yes, that is the Great Western Smelting & Refining Company.

Q. In which you agreed to furnish how many pounds of zinc, three thousand pounds of zinc at 16c a pound; isn't that true? A. Yes, sir.

Q. Mr. Corder, in that same matter, had a proposal in which he offered to furnish it at 16c; is that

(Testimony of Emar Goldberg.)

true? A. Yes, sir.

Q. And the Pacific Engineering Company had a proposal in which they [699—647] offered to furnish it at 9.75 a hundred; is that right?

A. In thirty days.

Q. In thirty days? A. Yes, sir.

Q. Now, to whom was the award made in that particular transaction?

A. The award was made to the Great Western Smelting & Refining Company.

Q. At what figure? A. At 16c a pound.

Q. At 16c a pound? A. Yes.

Q. Then this conversation about the thousand dollars, how does that compare in point of time with this award?

A. I didn't notice the time of that award, Mr. Allen.

Q. Beg pardon?

A. I didn't notice the time of that award.

Q. The time of this award, if I get it properly (you can look at it), is December 2d. There is the date, December 2, 1907.

A. It was sometime later than that.

Q. It was a little bit later than that, but about the same time? A. No, sir, not about the same time.

Q. Well, within a week, then, or so?

A. I am under the impression it was in the latter part of December.

Q. You think not it was the latter part of December, and not in the early part of December?

A. Yes.

(Testimony of Emar Goldberg.)

Q. It was not the early part of December, then, that he wanted to borrow the thousand dollars?

A. I am under the impression it was in the latter part of December. [700—648]

Q. Was that the first conversation he had ever had with you about borrowing money? Was that in the month of December, 1907? A. Yes, sir.

Q. I will call your attention to the requisition numbered 127 for pig iron, which was awarded to your concern in November—

Mr. ALLEN.—Well, did you have any conversation with your friend, Mr. Kettlewell, in the month of January, with reference to making him a loan?

Mr. ALLEN.—Did you have any conversation with Mr. Kettlewell, the Chief Clerk in the Navy Pay Office, in the city of Seattle, in the month of January, with reference to loaning him money?

A. Yes, sir, I had some conversations.

Q. About what time was that, do you recall?

A. That was in the latter part of January.

Q. In the latter part of January, 1908? Calling your attention to Plaintiff's Exhibit, requisition No. 207—

Mr. MORRIS.—Is that exhibit numbered?

Mr. ALLEN.—I forget the exhibit number. It is requisition No. 207 and been offered in evidence.

Mr. MORRIS.—I wanted to get the exhibit number.

Mr. ALLEN.—I will in just a second. (Handing papers to counsel for defendants.)

Q. You were a bidder before the United States

(Testimony of Emar Goldberg.)

Navy Yard authorities for material in the month of January, were you not?

Mr. SCHLESINGER.—What year?

Mr. ALLEN.—1908.

A. If the records show that—

Q. Well, I am asking you about whether that is a fact or not.

A. Well, I don't remember exactly. I could tell by referring to our books, or referring to the records, whether we did. Probably [701—649] we did.

Mr. ALLEN.—Probably you did, then, bid in January, 1908, and at that time there was some more conversation about your loaning some money to Kettlewell, is that true? A. Yes, sir.

Q. Calling your attention to a part of Plaintiff's Exhibit No. 18, which purports to be the typewritten copy of a letter, I will ask you whether or not you ever saw the letter of which this is a copy.

Mr. ALLEN.—Yes, certainly. What is your answer to that?

A. I never saw that letter until I heard it the other day. I say, the first time I saw that letter was in court.

Q. You never heard of the original, you never heard any mention made of it? A. No, sir.

Q. Calling your attention to requisition No. 193, which is Plaintiff's Exhibit 18, from which I have just taken that memorandum they have, I will ask you to state to the jury, whether or not, under this requisition, which calls for four thousand pounds,

(Testimony of Emar Goldberg.)

tell the jury what you shipped in compliance with the requirements of the four thousand pound requisitions. That is number 18.

A. There is no way of my telling from this memorandum how much we delivered.

Q. Do you remember how much you delivered?

A. No, sir.

Q. If the record shows that on this requisition for four thousand pounds, you, in fact, delivered 5,933 pounds, there was an excess delivery, then, at that time of 1,933 pounds, was there not? A. Yes, sir.

Q. Calling your attention to part of Plaintiff's Exhibit—a bill [702—650] of the Great Western Smelting & Refining Company, dated December 13, 1907, for the delivery of 5,933 pounds. That is from your company, wasn't it? A. Yes, sir.

Q. And that excess delivery was still pending in the month of January, was it not?

A. That is the requisition, the proposal regarding which we were talking this morning. I didn't recognize it from the Government folder. I have never seen those folders before.

Q. Well, I was showing you the folder.

A. I knew nothing about these folders.

Q. Well, then, answer this question. There was pending then in January, the question as to whether the Government should accept and receive 1,933 pounds of an excess delivery, where you had been directed to deliver four thousand pounds, and you had actually delivered 5,933 pounds, is that not true?

(Testimony of Emar Goldberg.)

A. Sometime after—

Q. (Interrupting.) Answer and then explain, Mr. Goldberg.

A. Yes, that was pending, but we received a letter sometime in January, telling us that the 1,933 pounds had been rejected. That was the 1,933 pounds that was afterwards accepted at 12 or 12½¢ a pound.

Mr. ALLEN.—So there was pending before the United States authorities, including Mr. Kettlewell's office, along in the early part of January, at least, the question of whether or not they would accept and receive an excessive delivery of nearly fifty per cent; isn't that true?

A. I don't know what it had to do with Mr. Kettlewell's office.

Q. Well, as a matter of fact, you do know those matters came through Mr. Kettlewell's office, and the check was issued through Mr. [703—651] Kettlewell's office?

A. I know the check was issued from Mr. Kettlewell's office.

Q. And you knew, if the matter was not accepted, that the matter was still pending in the hands of the Government authorities, was it not, at that time?

A. Yes, sir.

Q. You knew Mr. Kettlewell was the Chief Clerk over here in this office, and to him you would go and ask for information, and he would give you the proposals, and all that sort of thing; isn't that true?

A. Yes, sir.

(Testimony of Emar Goldberg.)

Q. So, at the time when you were discussing with Mr. Kettlewell the proposition of loaning him money, there was then pending before the United States authorities, including Mr. Kettlewell's office, the question of the acceptance or rejection of 1,933 pounds, an excess delivery, approximately fifty per cent; isn't that true? A. Yes, sir.

Q. What discussion did you have in the month of February, 1908, with Mr. Kettlewell, with reference to loaning him money?

A. Early in February, 1908, when Mr. Kettlewell—it was when Mr. Kettlewell first borrowed some money from me, borrowed \$75 from me, early in February.

Q. Early in February? A. Yes, sir.

Q. As a matter of fact, was that borrowed now, in the month of January, refreshing your recollection, the latter part of January?

A. No. I am fairly certain that was borrowed in the month of February.

Q. What would you say as to the fact that the books of the Great Western Smelting & Refining Company, if they showed that there was [704—652] an expenditure of \$100 along about the 10th or 11th of January, 1908, for which there is no adequate accounting in the books, cash withdrawal, and another in the latter part of January of the same year, would you say that part, or any of that money, was the money which was paid to Mr. Kettlewell?

Mr. SCHLESINGER.—One moment. I object to that as not being proper cross-examination assum-

(Testimony of Emar Goldberg.)

ing a state of facts not in evidence, argumentative and hypothetical.

The COURT.—I think he may answer.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Read the question.

(Question read.)

Mr. SCHLESINGER.—Now, it must be quite plain, if your Honor please, that that payment could not represent forty per cent, or indeed, twenty per cent of the transaction referred to. It obviously could have no reference under any theory of the case.

The COURT.—The Court ruled on the matter.

Mr. SCHLESINGER.—Exception.

A. That had nothing to do—I don't know the transaction to which you refer, nor the item to which you refer, but there was no possible way of its having anything to do with Mr. Kettlewell, because it was not the Great Western Smelting & Refining Company's money that I loaned to Mr. Kettlewell.

Mr. ALLEN.—That money could not have come from the books of the Great Western Smelting & Refining Company?

A. Oh, yes, the money came from the books of the Great Western Smelting & Refining Company, because all of the money I was getting, or most of it, I got from the Great Western Smelting & Refining Company, but it came from my own personal account.

Q. I see. Well, calling your attention to check No. 4502, in a number [705—653] of the Great Western Smelting & Refining Company, and you

(Testimony of Emar Goldberg.)

find there, Mr. Goldberg, this check signed by yourself, as manager of the company, payable to cash; that was a \$100 cash item; and there is another later in the month of \$75, payable to cash?

A. Where is the other one?

Mr. ALLEN.—Mr. House, can you tell me the date of those checks?

Mr. KERR.—What is the date of that?

Mr. ALLEN.—January 10, 1908.

A. This one (indicating).

Q. Check No. 4538?

A. Could I see the cash-book?

Q. Certainly.

Mr. KERR.—Do you want the cash-book of the company here?

The WITNESS.—Yes.

Mr. ALLEN.—We have never had it.

Mr. HOUSE.—We never had the cash-book prior to April 1st, 1908.

A. I can explain this item without the cash-book; but I wanted the cash-book to show what it was.

A. That check is endorsed—

Q. That one is? By whom?

A. That check is endorsed by a man who was travelling for the company, made out to a travelling man.

Q. Made payable to cash?

A. Yes, sir; and the travelling men cashed it, as the signatures on the back will show.

Q. Could you give us—

A. That check is endorsed by a man named Block;

(Testimony of Emar Goldberg.)

that man was travelling for the company. He might have asked for the check to be made to cash, because it was a \$100, and he might not have wanted to have a check made out in his own name, it might have [706—654] been a little hard or different for him to get it cashed. You might go through our books and find thousands of our checks like that, made out to certain men, and made out to cash, as a matter of convenience.

Q. Mr. Goldberg, can you provide for us checks upon your personal account, beginning along in December, 1907? We have never seen these, you understand? A. How is that?

Q. Can you get us the checks on your personal account, Emar Goldberg, from your own personal account, beginning 1907, and continuing down through the year 1908?

A. My personal checks returned from the bank?

Q. Yes.

A. I cannot very well give those to you, because when I burned up the lumber company's affairs, I burned up a lot of other stuff, and those checks were along with them.

Q. And these two or three you have in evidence were not burned up, were they?

A. Those two or three are not my personal checks.

Q. There are several here which are your personal checks, Mr. Goldberg? A. I haven't seen one.

Mr. ALLEN.—I mean, from your personal account?

(Testimony of Emar Goldberg.)

A. No, sir; I haven't seen a check here from my personal account.

Q. They are brought to your personal account from the Great Western Smelting & Refining Company. We haven't any of your personal checks?

A. No, the checks you have shown me are Great Western Smelting & Refining Company's checks. But you will find everything has been burned up. That belongs to the Great Western. I had no [707—655] right to burn or destroy, or do anything with any property that was the property of the Great Western; but my own personal property, my own checks, that were of no value, I burned those up.

Mr. ALLEN.—In other words, all of the checks, then, of your personal account, which began in 1907, in December, down through 1908, have been destroyed? A. Yes, and further along than that.

Q. I see; when were they destroyed?

A. At the time that I destroyed the lumber company's affairs.

Q. Now, that isn't very definite. In point of time, when was that?

A. That was after I sold the lumber company's, and just about the time I paid up its debt.

Q. When was that in point of time? Fix the date of it.

A. Well, now, Mr. Allen, I could get that information for you, but I would have to be talking absolutely from memory, and I don't recall exactly.

Q. Approximately. You know when these indictments were returned?

(Testimony of Emar Goldberg.)

A. I think it was about six months or a year before those indictments were returned.

Mr. ALLEN.—How many conversations did you have in the month of February with Mr. Kettlewell in regard to loaning him money?

A. I had, during the month of February, at least three conversations, and probably more, because I loaned him money three different times during the month of February.

Q. You loaned him \$75, I understood you to say, in the latter part of January, 1908?

A. I am not sure whether it was the latter part of January, or in February. I am more inclined to believe it was the early part of February.

Q. Very well, then. Then you had, you say, about three conversations [708—656] with him after that time, with regard to loaning him money; is that true?

A. I say, that I had three conversations with him at least, because I loaned him \$75 three different times. I might have had other conversations with him, but you are asking me, five years later, to recall conversations. Well, it is very hard for me to recall five years later every conversation I had with the man, but I can recall three, because I must have had three, having loaned him money three different times.

Q. Do I understand you to state you had three conversations in February, or did I misunderstand?

A. I say this: That I loaned him money three different times. It might be—the first was either late in January or early in February. I loaned him two

(Testimony of Emar Goldberg.)

other sums of \$75 each, during the month of February, or possibly the very early part of March, very early in March. It was directly after this that I went to see Mr. Kerr, when he wanted some more money from me.

Q. Then you loaned him money in the month of February, you think possibly \$75 more?

A. Now, I tried to explain three or four times, Mr. Allen.

Q. Well, it is not very clear to me. You loaned him \$75 about the first of February? A. Yes, sir.

Q. When did you loan him the next \$75?

A. Probably about a week or ten days later.

Q. A week or ten days later he borrowed \$75 more?

A. Yes.

Q. Where did this conversation take place that resulted in the loan of this \$75?

A. In the hall of the Walker Building. [709—657]

Q. In the hall of the Walker Building?

A. Yes.

Q. It was not in the office of the paymaster there; it was out in the hall, is that right? A. Yes, sir.

Q. Where did the conversation with reference to the third loan take place?

A. I am not sure whether he started the conversation in the office or not; he generally, when he wanted to talk about money to me, he would call me out into the hall.

Q. You say generally that he would do this. As a matter of fact, you had enough conversations with

(Testimony of Emar Goldberg.)

Mr. Kettlewell that there was sort of a habit established of talking out in the hall to talk about it, was that right? A. Well, the habit was on his part.

Q. But you were with him at the time, is that right?

A. If he would start the conversation,—he might have started the conversation in the office, and that he would say, “I want to see you out in the hall,” and he would talk to me out in the hall, and tell me how hard up he was, and how much he needed this money, and how I ought to let him have it, and one thing and another like that, as a man who is pressing you for money would talk to you.

Mr. ALLEN.—In what form did you let him have this money? Did you give it to him by check, by cash, or in what form?

A. I don’t remember how I let him have it.

Q. You don’t remember? A. No, I don’t.

Q. Do you remember how you let him have the first sum of \$75?

A. I don’t remember. I am under the impression one of the amounts I let him have, I almost distinctly remember, a cash check for \$75. [710—658]

Q. That was cash paid to him; but how about the other amount?

A. I didn’t say positively, Mr. Allen.

Q. I am asking for your best recollection.

A. I don’t recall. I know I let him have three amounts, and I know that one amount was in gold, but whether the other two amounts were by cash or check, I don’t recall.

(Testimony of Emar Goldberg.)

Q. I see. Well, which one of these payments, then, was in gold? A. I don't recall that.

Q. You don't know whether that was the first, second or third payment? A. No, sir.

Q. But you think that all of these payments or loans were made prior to the month of March, 1908, is that right?

A. I tried very hard, Mr. Allen, to explain that this is five and a half years ago, and I cannot place an exact date, but it was between the latter part of January and the early part of March.

Q. I see.

A. The reason that I recall that is this, that after the last loan he came to me again, or called me up there again, and wanted to borrow some more money. I thought that I had loaned him as much money as I could afford to loan him, and it looked like it was going to become too much of a habit with him, and I went up to Mr. Kerr—

Q. Well, never mind that.

A. I haven't explained this, and that is why I want to explain. The only reason I am able to place the date here is that when I went up to Mr. Kerr to ask his advice on the subject, at the end of the conversation I told Mr. Kerr Mr. Alper was going to be up here shortly, and I know Mr. Alper came up just about the first of April.

Q. About the first of April? A. Yes.

Q. Now, we have something definite. To what other person or persons [711—659] did you loan money in the month of December, 1907, or the months

(Testimony of Emar Goldberg.)

of January, February and March, 1908?

A. Why, I don't remember exactly what person. I did loan some money to Mr. Corder, but I don't remember exactly the months in which I loaned him the money.

Q. Outside of Mr. Corder to whom did you make any cash loans in that time?

Mr. SCHLESINGER.—I object to that as not being proper cross-examination.

The COURT.—Let him answer.

Mr. SCHLESINGER.—Exception.

A. Why, I might have loaned a small amount of money to a friend of mine if he had called upon me, but I don't remember now.

Mr. ALLEN.—I am asking you as to persons to whom you did loan.

A. It is an absolute impossibility to remember that, because if a friend of mine, that was a good friend of mine, came to me and wanted \$150.00, \$200.00, and I thought he actually needed it, I would go in debt to help him, so there is no reason why I should remember this period of six or seven years later, what particular friend, or to what particular man I happened to loan some money.

Q. Then, Mr. Goldberg, you did regard Mr. Kettlewell as a friend of yours at that time, did you not?

A. No more of a friend than any other man with whom the firm was doing business.

Q. But at this time you are unable to tell us a single individual, outside of Mr. Corder, to whom you

(Testimony of Emar Goldberg.)

loaned or let have any money during this period of time; is that right?

A. Give me a few minutes to think.

Mr. SCHLESINGER.—I object on the ground it has been asked and answered. [712—660]

The COURT.—Let him answer.

Mr. SCHLESINGER.—Exception.

A. I am not in the money loaning business, you understand that. If I did loan a friend of mine money I wouldn't make a record of the fact I happened to loan a friend of mine some money. If I ever did loan a friend of mine some money I never asked him to pay any interest on it, therefore it wouldn't be likely I would try to impress upon my memory to whom I have loaned money. If you want a list of people to whom I loaned money I can give you plenty enough.

Mr. ALLEN.—You at least regarded Kettlewell a good enough friend to at least loan him \$75.00 in gold without taking his check, note or any other evidence of that debt; isn't that true?

A. No, sir. I can't answer that. You inferentially ask two or three questions there. I loaned him \$75.00 without any note, or other evidence of security, that is true, but I didn't loan it to him on the basis of being such a good friend of mine that he was entitled to it on account of friendship.

Q. What was the basis?

A. The man had been worrying the life out of me for money. The first time he came to me thinking I was a millionaire, or something of the kind, and he

(Testimony of Emar Goldberg.)

could borrow a thousand dollars from me. When he saw he could not borrow a thousand dollars from me he asked for small amounts. When he asked me for \$75.00 the firm was doing business with the navy yard. The way I looked at it was, that here he was importuning me for money, bothering me for money, telling me that his family was hard up. I knew the man. He had what was apparently a responsible, high Government position. If a man like that asked me for \$75, or asked anybody else for \$75, the chances are that he would give it to him and loan it to him, and wouldn't think of asking him for a note, or other evidence of [713—661] security, because, as a matter of fact, if a man didn't return the money, \$75, without a note, he wouldn't return it with a note.

Q. You didn't think there was anything curious about his calling you out in the hall and talking to you out in the hall about the money?

A. If a man generally wants to borrow money from you he don't generally shout it so anybody can hear it. Whenever he wants to borrow money he is rather quiet about it. I know I have gone to the bank, and I didn't want everybody in the bank to know I was borrowing money.

Q. That is especially true when a man is in business and he has pending before him particular contracts?

A. I never had any other pending before me and I am not an authority on that particular subject.

Q. How many times, after the 1st of April, did Mr. Kettlewell ever importune you for money?

(Testimony of Emar Goldberg.)

A. After the 1st of April I had already had a talk with Mr. Alper.

Q. Yes, sir, you referred to that. I am asking you how many times, now.

A. He didn't call on me for money as often after the 1st of April as he did before, for the very good reason I tried to keep out of his way as much as possible after the 1st of April. I didn't go up to the navy pay office any oftener than I was compelled to go up there.

Q. Well, you still haven't answered the question. How many times did he call upon you for money after the 1st of April, 1908?

A. He called on me just a few times for money after that, and the last time he called on me for money was when he came up to my house out on Capitol Hill.

Q. Well, when was that; what was the date of this call on Capitol [714—662] Hill?

A. That was over a year later.

Q. That is over a year after April, 1908?

A. Yes. In the meantime I had been trying to get this money back, because he promised me when he borrowed the first \$75.00 that he would let me have it in a short time.

Q. You sat in the courtroom and heard the testimony of Mr. Silverstone, did you not?

A. Yes, sir.

Q. Mr. Silverstone is a friend of yours, is he not?

A. Yes, sir.

Q. You heard the statement of Mr. Silverstone

(Testimony of Emar Goldberg.)

made here about four days ago in this courtroom to the effect that he told you—that you told him that Kettlewell was a friend of yours? Did you or did you not use that expression?

A. I did not use that expression. Mr. Silverstone is a very fine gentleman, but he is mistaken about that.

Q. He is mistaken about that? A. Yes, sir.

Q. So, as a matter of fact, Kettlewell wasn't a friend of yours?

A. No more friend than any other man with whom you are doing business.

Q. Any other man with whom—

A. The same way as a man with whom you are doing business. I have some very good friends I have made on account of business, but I know a good many other men with whom I do business I know in a sort of friendly way, but you wouldn't call them friends from a social standpoint, and probably wouldn't call them very strong friends from a business standpoint.

Q. Do you know any of the names of any other of your business [715—663] friends to whom you loaned money without a check, or receipt of any kind, during the year 1908?

Mr. SCHLESINGER.—I object to that upon the ground it is a constant repetition. He has been asked and answered that several times.

The COURT.—He may answer.

Mr. SCHLESINGER.—Exception.

A. Without a check or without a note?

(Testimony of Emar Goldberg.)

Q. Yes.

Mr. SHIPLEY.—What do you mean, without a check?

Mr. SCHLESINGER.—Do you mean without either?

Mr. ALLEN.—Without either.

A. I am in the same position I was before. I might have loaned money to a friend of mine, but I don't recall.

Q. You can't recall it at this time?

A. I know one friend, I would rather much not give his name, to whom I loaned money, without a note.

Q. During the year 1908?

A. No, before the year 1908.

Q. Before the year 1908, but you can't think of anybody at this time in the year 1908.

A. I can't at the present moment. As I said before, I never kept a record, never kept any record of my personal affairs, never kept a set of books for myself. I did keep a sort of set of books for Mr. Alper and myself, but I was rather negligent about our personal affairs, and I never took the same care of them as I would the affairs of the Great Western Smelting & Refining Company.

Q. The first communication, now, you had with Mr. Alper, this official of one of the Great Western Smelting & Refining Company corporations, occurred about—with reference to this particular [716—664] carload of zinc, occurred about the 1st of April, 1908, is that right? A. Yes, sir.

(Testimony of Emar Goldberg.)

Q. Mr. Alper came to the city of Seattle at that time, did he?

A. Mr. Alper was in the city of Seattle about that time.

Q. From what point did he come to Seattle, do you recall?

A. No, I don't. I would like to explain that, Mr. Allen.

Q. Yes.

A. Mr. Alper has come to the city of Seattle from San Francisco, and he has come from Chicago. He has been here a number of times. And for me to say under oath right now that he came from San Francisco, or from Chicago, at that particular time would be impossible, because I am a little confused as to whether he did come from Chicago or San Francisco at that particular time.

Q. In other words, he dropped into the city of Seattle about the 1st of April, 1908, is that right?

A. He came to Seattle around that time.

Q. Where did Mr. Alper stop while he was in the city on this occasion?

A. I don't know. Mr. Alper has stopped at the Washington, he stopped at the Seattle, and he has stopped at our home. Now, if Mrs. Alper was with him that time he might have been at our home, and he might have been at the Washington. If Mrs. Alper was not with him he might have stopped at the Seattle, and he might have been at our home anyhow.

(Testimony of Emar Goldberg.)

Q. Well, that is the year 1908. You had a lot of so-called important conferences with this Mr. Alper to which you have testified very definitely and clearly? A. Yes, sir.

Q. Now, give the jury your best impression as to where Mr. Alper [717—665] stopped during his stay in the city during that time.

A. Mr. Allen, I have tried very carefully to tell you that I couldn't tell exactly where Mr. Alper stopped. Mr. Alper has been here with Mrs. Alper and without Mrs. Alper; he has been here with the President of the concern, Mr. Bloom, from Chicago; he has been here without him; he has stopped at our house and stopped at the hotel. Now, this was five years ago, five years and a half ago. He has been here many times. For me to tell exactly where he stopped would be next to impossible. I might—

Mr. SCHLESINGER.—Well, you have answered the question, Mr. Goldberg.

A. I don't recall.

Mr. ALLEN.—You do recall with considerable clearness every one of these conversations with this Mr. Alper which would seem to throw the responsibility for the acts of your company upon him rather than upon yourself, but you are unable at this time to tell about where the president of your concern stopped while he was in this city; is that true?

Mr. KERR.—I object to that as argumentative, your Honor.

The COURT.—Let him answer.

Mr. KERR.—Exception.

(Testimony of Emar Goldberg.)

The COURT.—Note an exception.

A. Why, it was a very simple matter for me to remember conversations Mr. Alper had with me on business, particularly a matter of this kind, where I might not recall where he stopped. I wasn't particularly interested in whether he would stop at the Washington or the Seattle. I tried to get him to stop at my house, though, as often as he would possibly stay there.

Q. But you are not able at this time to give the Government—

Mr. KERR.—He has already answered three times. [718—666]

Mr. ALLEN.—You are not able at this time to give the Government any information which will assist us in throwing any light upon the visits of this Mr. Alper?

Mr. SCHLESINGER.—Your Honor please, we object to that. He has given them every bit of information he has here. It is not proper cross-examination. They have all our books and documents, and everything else.

The COURT.—He may answer as far as he can remember.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Very well.

Q. How many times did you see Mr. Alper during his stay in the city?

A. Well, I saw Mr. Alper a great deal of the time while he was in the city.

Q. At what places did you see him?

(Testimony of Emar Goldberg.)

A. I saw him at the office of the firm, and saw him at my house; I saw him more or less at various times; in fact, I was with Mr. Alper most of the time when he was in town.

Q. How long was he here, as a matter of fact?

A. Well, I don't recall. He very likely didn't stay here over two or three days. I doubt whether he ever stayed here over three days, possibly four days.

Q. I believe you stated on your direct examination, Mr. Alper, when he was here, told you to put in a bid in the case of zinc required at the navy yard, to put in a bid of 12½ cents a pound; is that right?

A. That is true.

Q. He said 12½ cents a pound, did he?

A. Yes, sir.

Q. Your memory is clear about that?

A. Approximately 12½ cents. When Mr. Alper would say to me [719—667] to put in a bid at 12½ cents he naturally gave me some discretion, that it might be a trifle one way or the other.

Q. In answer to a question propounded by your own counsel you answered distinctly and clearly he told you to put in a bid of 12½ cents a pound?

A. I did.

Q. You did prepare and file with the navy yard officials, with the Navy Pay Office in this city, a proposal, did you not, in the name of the Fowler Metal Company? A. Yes, sir.

Q. Is that made out in your own handwriting? The signature on it your own, is it?

(Testimony of Emar Goldberg.)

A. I don't recall, Mr. Allen.

Q. Well, we will take a look at it, Mr. Goldberg (handing papers to witness). Calling your attention to Plaintiff's Exhibit No. 7, calling your attention more particularly to that bid, the second proposal in the list, calling your attention to what purports to be the bill of the Great Western Smelting & Refining Company. A. That is my handwriting.

Q. That is your handwriting? A. Yes, sir.

Q. These figures extended out on the right, the sum of \$6,250.00, 121½c and 6250, those are your figures in your handwriting; is that right?

A. Yes, sir, those are my figures.

Q. This is your signature down here, isn't it (showing)? A. Yes, sir, that is my signature.

Q. Then you had obeyed instructions, the instructions of this Mr. Alper, and had put in a bid at 121½ cents, had you not? A. Yes, sir. [720—668]

Q. Thereafter you went to Mr. Silverstone, and saw Mr. Silverstone, and requested him to put in a further and an additional bid; isn't that true?

A. Yes, sir.

Q. Calling your attention to this (handing paper to witness), do you recall that as being the instrument which you took to Mr. Silverstone?

A. I guess that is the—

Q. Take a look at it.

A. You asked me if I took this to Mr. Silverstone. I don't recall very distinctly whether I took this or whether he went up and got it. I am very strongly under the impression that he went up to the office

(Testimony of Emar Goldberg.)

and asked for a copy of the proposals.

Q. If Mr. Silverstone testified that you brought that instrument to him, I believe at his hotel in this city, and asked him to sign that, and he did sign it at your request, would you think that Mr. Silverstone was probably right in regard to the matter?

Mr. SCHLESINGER.—I object to that as being argumentative and calling for an opinion of the witness. It is clearly improper, if your Honor please.

The COURT.—He may answer.

Mr. SCHLESINGER.—And Kettlewell—

The COURT.—Note an exception.

Mr. SCHLESINGER.—And Kettlewell testified that he gave it to Mr. Silverstone in his own office.

Mr. ALLEN.—I object to that, your Honor. That is suggesting to the witness.

The COURT.—Proceed. Note an exception.

Mr. ALLEN.—Read the question.

Q. (Question repeated.) [721—669]

A. Might be mistaken.

Mr. SCHLESINGER.—His opinion doesn't throw any light upon the subject.

The COURT.—The Court has ruled upon the matter. I think it is a matter of cross-examination.

Mr. SCHLESINGER.—Exception.

The COURT.—Note an exception.

Mr. ALLEN.—Do you understand the question, Mr. Goldberg?

A. Yes. Mr. Silverstone was undoubtedly mistaken about that.

Q. You think Mr. Silverstone is mistaken?

(Testimony of Emar Goldberg.)

A. Yes.

Q. Did Silverstone ever come down with that instrument and confer with you about it at the time he signed it?

A. As near as my memory serves me, I asked Mr. Silverstone to go up to the Navy Pay Office and ask for a copy of the proposals for fifty thousand pounds of zinc, and tell Mr. Kettlewell, who was the Chief Clerk, that he represented the Fowler Metal Company. Mr. Silverstone went up to the Navy Pay Office and got this proposal. Now, whether—Mr. Silverstone says we went down to the Dutch room. Whether we went down to the Dutch room or signed it some place else, I don't recall, but I do know Mr. Silverstone made this bid out under my direction and signed it. Exactly where I don't recall. It might have been, as he says, in the Dutch room, and it might have been—he probably is right if he says it was down there.

Q. But at any rate you were conferring with Mr. Silverstone and got Mr. Silverstone to put his signature to that proposal; is that right? A. Yes, sir.

Q. You induced him to do that?

A. Yes, sir. [722—670]

Q. You looked through the proposals you have before you, and you find there a proposal of the Corder Manufacturing Company. Tell the jury the amount of the proposal as made by the W. A. Corder Company, whatever it is. What price do they quote?

A. \$12.60.

Q. \$12.60 per hundred? A. Yes, sir.

(Testimony of Emar Goldberg.)

Q. Mr. Goldberg, did you tell Mr. Corder that you were putting in another and a new bid to the United States Government for this car of zinc?

A. I don't understand just exactly what you mean, Mr. Allen.

Q. (Question repeated.)

A. I heard the question, but I don't understand exactly what you mean.

Q. Well, I thought it was perfectly plain.

A. You mean a separate bid aside from the Great Western Smelting & Refining Company?

Q. Mr. Corder was putting in a bid, and you were putting in a bid, and you have testified and stated that you and Corder were operating together in the sale of zinc to the navy yard? A. Yes, sir.

Q. Now, I am asking you whether or not, after you had put in your proposal at \$12.60 a hundred, you told Mr. Corder that you were going to put in another bid at \$12.45 a hundred in the name of the Fowler Metal Company? A. No, sir.

Q. You didn't. You didn't tell Mr. Corder anything about that? A. No, sir.

Q. Then, Mr. Goldberg, if you had one bid in there at \$12.50, and Mr. Corder had a bid in there at \$12.60, and you were in partnership [723—671] with Mr. Corder, and you put in a third bid under the name of a fictitious concern, or subsidiary concern, as your counsel terms it, of \$12.45, you were attempting there to deceive either Mr. Corder, or the United States Government, or Mr. Kettlewell.

(Testimony of Emar Goldberg.)

Who were you attempting to deceive? Now tell the jury.

A. Mr. Corder and the Great Western had trouble sometime previous to that. The trouble was, that we had been doing this business together. The Corder Company was selling the zinc and giving the Great Western Smelting & Refining Company half of the sale price and half of the profits, providing they had already paid for half the zinc, or depending upon the original condition. There were times when the Great Western Smelting & Refining Company might have sold some zinc. In that case the profits were also equally divided. This was, I believe, only shortly after Mr. Corder had taken over this business from the Pacific Engineering Company, who, by the way, were the people who got the Great Western Smelting & Refining Company interested in the zinc business. So I went down to Mr. Corder's office one day—

Q. Now, what time? Fix the time as nearly as you can.

A. Why, I can't fix the time. It is sometime previous to this, but the exact time I don't recall. You are asking me to fix dates.

Mr. SCHLESINGER.—Approximate the time, Mr. Goldberg.

A. It was sometime previous to this; how much before, I don't remember. I know the circumstances, but the time it is impossible for me to recall every little date in connection with the business of the Great Western Smelting & Refining Company.

(Testimony of Emar Goldberg.)

Mr. ALLEN.—Yes.

A. (Continuing.) So I went down there to Mr. Corder to make a settlement for the amounts that we had sold and he had sold and [724—672] arrange a balance. The matter apparently to me was very clear that he owed us a certain amount of money. After we had figured it up he says, “Well, we owe you so much.” “Why,” I says, “No, Corder, it is \$50.00 more than that.” He says, “No, this is how much we owe you.” “Well,” I says, “Now, Corder—” and I started to explain it to him. He says, “No, that is as much as we owe you.” Well, I got very angry, not because he wanted to pay us \$50.00 less than what I claimed he owed the firm, but because he didn’t want to make any explanation. I was there prepared to make an explanation and, for some reason or other, he didn’t want to make an explanation. He said, “That is all we owe you.” So I says, “Now, Mr. Corder, you will either pay us that amount or I will walk right out of this office up to the office of Kerr & McCord and we will bring suit against you this afternoon.” He says, “Go ahead.” So I walked up to the office of Kerr & McCord and met Mr. Kerr. I told him the circumstances. Mr. Kerr said to me, “Now, Emar, you never have been in court in your life, have you?” I says, “No, I have never been in court in my life, Mr. Kerr.” “Well,” he says, “you can’t afford to go to a courtroom for \$50.00, and can’t afford to have the Great Western Smelting & Refining Company dragged into the courtroom for \$50.00. You

(Testimony of Emar Goldberg.)

take this amount Mr. Corder offers you and quit doing business with W. A. Corder & Company.

Q. Mr. Goldberg, can you give us any approximate time as to when you had this difficulty or difference with Mr. Corder?

A. I don't recall. It was sometime previous to this; how much difference, I don't remember.

Q. Sometime previous. Was it at or near the month—the 1st day of April, 1908?

A. No, it was sometime previous to that.

Q. Sometime prior to that? [725—673]

A. I haven't finished, by the way, Mr. Allen.

A. (Continuing.) So when Mr. Alper came to Seattle on one of his trips, I don't recall what trip it was, it was a previous trip to this, I told him about this transaction. It happened to come up in an offhand sort of a way.

Mr. ALLEN.—This is after April, 1908?

A. This is before April, 1908, Mr. Allen.

Q. Oh!

A. And he rather taunted me on the fact that Mr. Corder—that I would allow any man to take advantage of me like that. “Well,” I says, “what would you do about it?” He says, “I tell you what I would do. I would do some more business with the man until I had made up that \$50.00. After I made up that \$50.00 then I would quit doing business with him.” And that is how we got to doing business with him again.

Q. So—

Mr. SCHLESINGER.—Just tell what happened

(Testimony of Emar Goldberg.)

to him afterwards.

A. As far as Mr. Corder was concerned, since then I have been satisfied he was honest enough in his stand, but simply didn't want to make any explanation, and that is what made me angry at the time. That is all there was to that transaction.

Mr. ALLEN.—So when you put in the \$12.45 bid in the name of the Fowler Metal Company, then you were trying to get the best of or trick Mr. Corder, weren't you?

A. I had a double purpose.

Mr. ALLEN.—So whenever the Corder Company and the Great Western Smelting & Refining Company, in the months prior to April, 1908, whenever they were putting in bids, you really had the same zinc, a community zinc, down in your warehouse, which belonged to you and the Corder Company; is that right? [726—674]

A. Partly right, Mr. Allen. The zinc might have been down at our place, it might have been down to Mr. Corder's place.

Q. But it was community zinc; is that true?

A. In most instances I believe it was.

Q. And whenever you would put in a bid, say, at 16 cents, and Corder would put one in at 14 cents, it didn't make any difference who got the award, you were going to divide the profits?

A. That is right.

Q. That was the system all the way through. Now, on about the 1st day of April, 1908, getting back to that specific time, what day was it, as near

(Testimony of Emar Goldberg.)

as you can recall, when Mr. Alper told you to fix the sum of \$12.50 per hundred for this zinc?

Mr. SCHLESINGER.—I object to that upon the ground it has been inquired into, asked and answered fully half a dozen times.

The COURT.—He may answer. Note an exception.

A. At the time Mr. Alper was in Seattle.

Mr. ALLEN.—Well, that isn't definite as to time. I want to know if it was the first day he landed here, or the last day he left.

Mr. SCHLESINGER.—I object upon the grounds it has been asked and answered. He said he could not give the date accurately.

The COURT.—Answer, if you can, to the best of your knowledge.

Mr. SCHLESINGER.—Exception.

A. That would be an absolute impossibility for me to answer as to a certain day on which he told me to do that. Mr. Alper and I had conversations together every minute of the time that I saw him while he was in Seattle. It may have been one of the first things he told me, and might have been one of the last. I never kept any record of the conversations.

Mr. ALLEN.—It was about the 1st of April, 1908, the idea did reach the mind of Mr. Alper that \$12.50 was the price which you [727—675] should fix on this car of zinc; and on the same day, over across Puget Sound, in the Navy Yard, the same idea reached the mind of this defendant Meyer \$12.50

(Testimony of Emar Goldberg.)

was a proper price to place upon this car of zinc?

Mr. KERR.—Object as argumentative, and take an exception to counsel pursuing that line of argumentative examination.

Mr. SCHLESINGER.—How does he know when it reached the mind of Meyer?

The COURT.—The record of the testimony will bear that out if it is in the evidence.

Mr. SCHLESINGER.—Absolutely unfair, and counsel ought to know it.

The COURT.—Proceed. Exception.

Mr. ALLEN.—Did you tell Mr. Alper you had any information from the navy yard officials, or any of them, with reference to the proper price to be fixed upon the zinc to be purchased by the navy yard?

A. It would have been impossible for me to tell Mr. Alper something I didn't know, and I had no information, so it would have been impossible for me to tell him such a thing.

Q. You had information that the Atlantic Battleship Squadron was coming around, did you not?

A. Oh, everybody knew that.

Q. Everybody knew that. You knew that along in the month of March, did you not? A. Yes, sir.

Q. You knew with reasonable certainty approximately the exact date when the battleship fleet would reach here, did you not?

A. That I don't recall.

Q. You don't recall. Well, when you wrote the letter to Matheson & Heggler in the month of March, dated March 16, 1908, Plaintiff's Exhibit No. 37—

(Testimony of Emar Goldberg.)

you wrote that letter, didn't you (exhibiting same [728—676] to witness)?

Mr. SCHLESINGER.—That is something already in evidence?

Mr. ALLEN.—Yes, Mr. Schlesinger, No. 37.

A. I wrote that letter.

Q. That is your signature, isn't it, Mr. Goldberg?

A. Yes, sir.

Q. Calling your attention to that particular part of the letter which reads as follows: "This is considerably more zinc than the Government ordered, but the navy yard people here have asked us to carry this in stock on account of the battleship fleet coming here." Did Mr. Spear, the officer in charge of the United States navy yard, at Bremerton, ask you to carry this carload of zinc in stock?

A. No, sir.

Q. He did not? A. No, sir.

Q. You mind telling, for the information of the jury, what official of the United States Government asked you to carry this carload of zinc in stock?

A. It was nothing strange for any officer in any department to telephone over, or write, and ask about different affairs. We had been delivering zinc to the yard. Some one from some department telephoned over and asked us if we had a certain kind of size of zinc. I don't recall the exact conversation, except that this remark, or a remark similar to this, was made: "Well, are you folks going to carry this zinc?" "Well," I says, "yes, I think we will carry this zinc from now on." That is what

(Testimony of Emar Goldberg.)

caused me to write this letter in which I asked Matheson & Heggler Zinc Company to keep a price open for thirty or sixty days. It is figuring that if the battleship fleet came around it would only be natural for the navy yard to require another car of zinc. If the navy yard [729—677] required another car of zinc we, already having an option on a car, would be in a position to supply it quicker than anyone else; and if the price advanced we would also be in a position to have the price on which we had bought the previous car, and we would naturally, from every possible point of view, be in a better position than anyone else to supply it. And at the same time I did not order the car of zinc, because I wouldn't order a car of zinc when we already had one car bought without talking a thing of that kind over with Mr. Alper.

Q. One car is enough at the time, Mr. Goldberg. Now, you just stated, in answer to my question, that the navy yard people, some one, whom you can't identify, or won't name,—

A. I didn't say that I wouldn't name him.

Q. Well, will you name him, then?

A. I don't recall. There is nothing strange for any department officer to telephone.

Q. Refreshing your recollection, it wasn't Mr. Meyer, sitting over here, was it, that phoned?

A. No, sir, it wasn't Mr. Meyer.

Q. It wasn't Mr. Meyer? A. No, sir.

Q. But you are sure it wasn't Mr. Spear?

A. I wouldn't swear it wasn't Mr. Spear.

(Testimony of Emar Goldberg.)

Q. If Mr. Spear says it wasn't he was probably right?

A. He probably would be, I don't doubt it.

Q. You think the query was directed to you as to whether you were going to carry zinc of this size in stock?

A. No, I didn't say that.

Q. I understood you to say so?

A. I said we were asked if—it came about like this: Some one [730—678] telephoned from one of the departments of the yard. I don't recall what particular department it was, and—

Q. No,—

Mr. ALLEN.—Mr. Goldberg, for six months prior to April, 1908, or longer than that, months prior to that time, you had been selling zinc of this particular size and kind to the particular navy yard authorities?

A. Yes, sir.

Q. So it wasn't anything new about you having some of this zinc on hand, was it?

A. No, nothing for us having some of it. We didn't always have it on hand.

Q. Was Mr. Alper in the city of Seattle on the 11th day of April, 1908?

A. No, sir.

Q. He was not. You received, either by personal request or otherwise, from the Navy Pay Office in this city that proposal which was just shown you, did you, on the 11th day of April?

A. Yes, sir.

Q. You knew if that contract was on the square that that contract would be submitted to numerous other bidders, did you not?

A. Yes, sir.

(Testimony of Emar Goldberg.)

Q. You noticed on that proposal that it called for delivery within five days for a full car of zinc, did you not? A. May I look at it?

Q. It is right before you, I think.

A. (Witness examines paper.) Yes, sir.

Q. Called for delivery within five days for a full car of zinc. You knew this proposal was going to various other men? A. Yes, sir. [731—679]

Q. On that same day you telegraphed to the Matheson & Heggler zinc people at La Salle, Illinois, for this car of zinc at \$5.80, did you not?

A. So the records show, I believe.

Q. Well, is that a fact?

A. Yes, sir, if the records show that.

Q. You did?

A. That was following out an arrangement that I have already spoken of with Mr. Alper.

Q. Following this 11th day of April, when you ordered the zinc under your contract with the United States Government, you were required to deliver that car of zinc at the navy yard at Bremerton on the 20th day of April, 1908; isn't that right?

A. Yes, sir.

Q. That is true, isn't it? A. Yes, sir.

Q. When did that car of zinc arrive in the city of Seattle? A. I don't recall.

Q. Here is your own bill book, I think, of your own company, Mr. Goldberg, in which it says April 29, 1908, nine days after the date of delivery of this car of zinc?

(Testimony of Emar Goldberg.)

A. That doesn't prove the car of zinc arrived on April 29th.

Q. If the record shows that the car of zinc arrived at the Navy Yard on May 9, 1908, or nearly twenty days after the day on which you contracted to deliver it, can you recall from your recollection how many days it lay down here in front of your warehouse?

A. When we sent the wire in for that zinc was the 11th day of the month.

Q. That is right.

A. If I recall, that was on Saturday. [732—680]

Q. That is right.

A. The wire reached there on Monday. We had an option on a car of zinc. It was the plain size 1 by 6 by 12. I presumed that car would be loaded and shipped on Monday, which was the 13th. We had until the 20th to deliver. There has never been—I withdraw that when I say there never has been. Generally, if you are one, two or three days late, there is no fuss made about it at the navy yard. I figured that car would not take over about eight days, seven to nine days, being rushed and traced to reach Seattle. Therefore, that car would reach Seattle about the 20th or 21st. That is the basis on which I figured when that car was ordered. In fact, it took eleven days. And afterwards, when we got it here, Mr. Corder and I decided to add 9,500 or 10,000 pounds to the car. That was something that I did not know, when the car was ordered.

Q. But you delivered it to the navy yard authori-

(Testimony of Emar Goldberg.)

ties on May 9, 1908, did you not?

A. We shipped it over to the navy yard, I believe, before that.

Q. You shipped it? A. Yes.

Q. Your contract was to deliver it to the navy yard, was it not? A. I understand that.

Q. Take a look at the delivery book of the navy yard authorities down at the bottom of the page.

Mr. ALLEN.—Plaintiff's Exhibit "57," Mr. Kerr.

A. Yes, I see that.

Q. Deliver on May 9th. That is the car of zinc?

A. Yes. The worst that could happen in that case would be they would reject it; but they wanted it pretty bad and it was pretty certain they wouldn't reject it.

Q. Mr. Goldberg, if this requisition had called for delivery of [732½—681] this zinc in thirty days instead of five days, wouldn't it have been much easier for any firm in this city of Seattle to have bid for that zinc, any reputable firm, than if it called for delivery in five days?

A. Not necessarily. I have known of cases where there was more than thirty days and the other firms didn't bid, or didn't appear to get the material from the east because it was not particularly in their line.

Q. You have stated in your direct examination there wasn't a car of this kind of zinc in the city of Seattle? A. Yes, sir.

Q. Now, I am asking you as a business man, and look at these men as business men, and tell them whether or not it would not have invited bidders to

(Testimony of Emar Goldberg.)

have made this a thirty-day delivery instead of a five day delivery?

A. That might have, yes, but I have known many instances when there was more than thirty days when they did not bid. I know of cases by these records when material was delivered to the Government at eighteen and three-quarters, when we could have bid at nine, and I didn't take the opportunity to bid, and we could have made 150 per cent on the material.

Q. You heard the statement of the gentlemen who came here from Illinois and brought the books of the Matheson & Heggler Company, you heard his testimony? A. Yes, sir.

Q. When he testified and stated before this jury that the Whiton Hardware Company, the Seattle Hardware Company, the Schwabacher Hardware Company, or any one of the reputable firms of this city, could have purchased this zinc from his concern at exactly the same price that you purchased it. Wouldn't it have been possible for [733—682] them to bid if the delivery had been thirty days?

A. They could. But the fact is they were buying zinc right along from the W. A. Corder Company, and when a firm gets to doing business with one concern the chances are they will keep on doing it and perhaps never think of telegraphing to Matheson & Heggler.

Q. If the navy yard officials got in the habit of doing business with your firm, and you stood pretty well with Meyer and Kettlewell, you thought they

(Testimony of Emar Goldberg.)

would stay with you and do business?

A. No, sir, that is not necessarily the case.

Q. Now, when you received this check for \$7,-417.09 from the United States Government from whom did you obtain it?

A. From Mr. Kettlewell.

Q. From Mr. Kettlewell. I understand you had some conversation, according to your statement, with Kettlewell at the time you obtained the check?

A. Yes, sir.

Q. You testified, I believe, in your direct examination it was May 26th, 1908, is that right?

A. Yes, sir.

Q. Where did this conversation occur with Kettlewell? A. Right in the main office there.

Q. In the main office. Did you see there on this occasion Mr. Haney, or Mr. Johnson, two of the clerks there under Mr. Kettlewell? A. No, sir.

Q. Were they there on this occasion or not?

A. They were not.

Q. You were there in the office, were you?

A. On the first occasion, yes, sir.

Q. Well, I am talking about this conversation you had with [734—683] Kettlewell and this quarrel.

A. There were two conversations.

Q. This controversy you had with Kettlewell about delivering the check?

A. There were two controversies.

Q. I am talking about that—well, the first controversy you had, then, with Kettlewell in regard to this check, was either one of those two clerks in

(Testimony of Emar Goldberg.)

the navy yard present there with Kettlewell?

A. No, sir, they were not.

Q. Kettlewell was there by himself? A. Yes.

Q. It wasn't in the office of the Paymaster himself, but out in the big room, is that right?

A. Yes, sir.

Q. You received this check on the 26th day of May, 1908, that is right, is it? A. Yes, sir.

Q. The Government check. Refreshing your recollection, the 26th day of May is about Tuesday or Wednesday in the week. Do you recall, and is it a fact, that the 30th day of May, 1908, is in every state of the Union practically, a Memorial Day and a holiday? A. Yes, sir.

Q. If Memorial Day fell on the 30th day of May, 1908, and that was Saturday, and the 31st day of May was Sunday, and you received this check on the 26th day of May, 1908, and cashed it, or delivered it to the bank on June 1st, 1908, you had this check in your possession, then, not the five business days, but three, isn't that true?

A. From your point of view that is true.

Q. Yes, sir. [735—684]

A. We had it the 26th, 7th, 8th and 9th, four days.

Q. But if you received this check along late in the afternoon, or after lunch, so it couldn't be deposited that day, you would really have that check in your possession three banking days?

A. Three full banking days; yes.

Q. Now, on June 1st, 1908, you had this check, as you had it for three days prior thereto, in your

(Testimony of Emar Goldberg.)

physical possession, did you not? A. Yes, sir.

Q. For your information, I call your attention to that 30th falling on Saturday.

A. Yes, I notice that.

Mr. ALLEN.—I ask the Court to instruct the jury, as a matter of law, the 30th fell on Saturday.

Mr. ALLEN.—You had this check in your possession, then, on June 1st, 1908, did you not?

A. Yes, sir.

Q. You have stated to this jury, directly and indirectly, that the Fowler Metal Company was a subsidiary concern of the Great Western Smelting & Refining Company?

A. There is no question about that.

Q. There is no question about that. Then if it was a subsidiary concern, and you had any authority to act for them, why didn't you personally put your signature on that check and send it through in the proper orderly way through the bank?

A. Because Mr. Silverstone originally signed the bid.

Q. Had originally signed the bid?

A. Yes, sir.

Q. In other words, your connection with it had been concealed, is that true?

A. As far as the Navy Pay Office was concerned.
[736—685]

Q. You never disclosed to them the fact you were putting in two bids there for the same concern, did you? A. No, sir.

Q. Never at any time? A. No, sir.

(Testimony of Emar Goldberg.)

Q. Until the Government officials discovered that fact? A. No, sir.

Q. I will ask you to state your reason before this jury here that this check, in your possession for three full banking days, and the Fowler Metal Company being, as you have stated, a subsidiary concern of the Great Western, which you represented as manager, if there was nothing improper about it why didn't you endorse this and send it through the bank in your own way, in your own name?

A. Because, as far as the Navy Pay Office was concerned, it was put in as the Fowler Metal Company, and as we were bidding to the Navy Pay Office I didn't want to use the name of the Great Western Smelting & Refining Company on the back of that check.

Q. You didn't want to use it because you didn't want the Navy Pay Office to discover that fact; isn't that a fact? A. Yes, sir.

Q. That is a fact? A. Yes, sir.

Q. You said, yes, sir, I believe? A. Yes, sir.

Q. Calling your attention to Plaintiff's Exhibit number "5," the first sheet, this photographic copy of the check in the sum of \$7,417.09, calling your attention to the endorsement on the back of that check, I will ask you whether or not that part of the check, Fowler Metal Company, per E. S. Fowler, president, and something, whether that is your signature or not? [737—686]

A. That is *not* my signature. That was written by me.

(Testimony of Emar Goldberg.)

Q. You signed that, you wrote that, did you?

A. Yes, sir.

Q. Do you now claim to this jury, in the presence of this jury, that this E. S. Fowler, president and Mgr., that those are your initials, as you claimed here in the court on the first or second day of the trial?

A. I didn't claim that. I had told Mr. Schlesinger I wrote that and he understood me to say those were my initials.

Q. Didn't you walk directly over between Mr. Kerr and Mr. Schlesinger and state, "Those are my initials," and I said I wouldn't concede that for a moment?

A. No, sir, I didn't do that. Mr. Schlesinger thought I did that. He immediately turned around and said, "I thought you said that." I said, "No, Mr. Schlesinger, I didn't say that; I wrote that."

Q. You wrote that, then? A. Yes.

Q. If you wrote it, then, on this occasion why couldn't you have written it just as well, then without the intervention of Mr. Silverstone?

A. I don't understand what you mean.

Q. You did endorse the name of E. S. Fowler Company, you just testified to that? A. Yes.

Q. Why couldn't you have done that on the second or third day prior to that time, then?

A. Because I was holding the check to see if anything would be done by the Navy Pay Office about stopping payment or anything of that kind.

Q. But you still haven't answered the question.

(Testimony of Emar Goldberg.)

Since you did think [738—687] you were able to write the name of E. S. Fowler and Company—you did do it, as a matter of fact, as you have testified?

A. Yes, sir.

Q. Why didn't you do it, then, without bothering Mr. Silverstone about it?

A. Because it was put through Mr. Silverstone's account.

Q. If you wanted to be fair with the United States Government officials, why didn't you put your name down below that of E. S. Fowler to show the man was exercising authority of signing his name?

A. I didn't think that was necessary, as long as I had Mr. Fowler's authority to sign his name.

Q. You just testified you didn't want to disclose it to the United States authorities.

A. I testified I didn't want the Navy Pay Office to know we had that bid in, although Mr. Kettlewell knew it was our bid.

Q. You heard the statement of Mr. Silverstone on the stand that you sent him to the bank with this check, requested him to put this check through his own account, that he went to the bank with it and returned, and thereafter you wrote E. S. Fowler, President and Mgr. Is his statement in regard to those facts correct? A. It is absolutely.

Q. Absolutely correct? A. Yes.

Q. In other words, Silverstone went over and tried to deposit it and couldn't deposit it, and came back, and he refuses, then, to sign this name, and

(Testimony of Emar Goldberg.)

you signed the name and went over to the bank, is that right?

A. Mr. Silverstone didn't refuse to sign the name, but his own signature was already on the back of that check, and it was necessary for me to sign the name of Fowler Metal Company to the check. [739—688]

Q. If Mr. Silverstone had the authority to sign their name to put in a bid to the United States Government, wouldn't he *had* some authority to sign the check to pay for it?

A. If he wanted to do that in his bank it would be necessary for me to telegraph to San Francisco for written authority for him to go to the bank, and show the bank his written authority to deposit the check. That was a lot of proceedings that I thought entirely unnecessary.

Q. But you had them carried out anyway?

A. No, sir, I didn't have him carry it out anyway. I put the signature on there myself.

Q. But for some reason you wanted this \$7,000 transaction to go through the bank account of Mr. Silverstone, didn't you? A. Yes, sir.

Q. You wanted him—

A. It wasn't the matter of going through the bank account of Mr. Silverstone, that wasn't the reason, but I did not want the name of the Great Western Smelting & Refining Company on the back of that check, because the name of the Great Western Smelting & Refining Company was not on the original bid.

Q. You heard the statement of Mr. Silverstone

(Testimony of Emar Goldberg.)

made in this court that you requested him to put this through his bank. Is that true or is it not true?

A. It is true.

Q. It is true. Well, what did you just say it wasn't true, then for?

A. I didn't say it wasn't true, Mr. Allen.

Mr. ALLEN.—But at any rate, you wanted this check to go through Silverstone's account and not go through yours, or that of the Great Western; isn't that true? [740—689]

A. Yes, but not merely—the reason was not that I wanted it to go through Mr. Silverstone's account. The reason of it was I did not want it to go through the Great Western Smelting & Refining Company's account, but that wasn't the reason for putting it through Mr. Silverstone's account, so it would go through his account, for the purpose of going through his account. The purpose was it would not go through his account. The purpose was it would not go through the Great Western Smelting & Refining Company's account and bear the Great Western's endorsement when the Great Western Smelting & Refining Company's name was not attached to the bid.

Q. The purpose was, then, at least to conceal from somebody the fact that the Great Western Smelting & Refining Company got any of that money; isn't that true?

A. No, the Great Western was entitled to every cent of that money. The Great Western Smelting & Refining Company had delivered the entire

(Testimony of Emar Goldberg.)

amount of the material called for on that proposal and was entitled to every dollar that the Government owed it, and that money on that check belonged to the Great Western Smelting & Refining Company, and Mr. Corder, as his interest appeared in the transaction, and to no one else; and there was no reason on earth, no good, valid reason on earth, why I should not have put it through the account of Mr. Silverstone, or to anybody else on earth, if I wanted to, as long as the Great Western Smelting & Refining Company got the money it was legitimately entitled to.

Q. Why didn't you put it through the account of your lumber company? That would have been all right, wouldn't it, Mr. Goldberg?

A. No, sir, it would not, because I did not mix up my affairs with those of the Great Western Smelting & Refining Company, unless something happened to make it absolutely necessary, and it was entirely unnecessary in this transaction. [741—690]

Q. You were perfectly willing to mix up poor Silverstone in your affairs?

A. I had no idea that anyone would ever come forward and indict me, or I would rather have my head cut off than have Mr. Silverstone indicted, when every man in the grand jury and every attorney knew the man was absolutely innocent, and threw disgrace on him for two years and a half and caused me to suffer for it.

Mr. ALLEN.—This \$7,417 did eventually, at least in part, find its way into the coffers of the Great

(Testimony of Emar Goldberg.)

Western Smelting & Refining Company, did it not?

A. All that the Great Western Smelting & Refining Company was entitled to receive.

Q. All went there. Your troubles, the troubles, Mr. Goldberg, to which you have just stated as regards Mr. Corder, were soon after April 15, 1908, ironed out?

A. I don't know exactly what you mean by ironed out.

Q. Well, smoothed out? A. Yes, sir.

Q. You say, "Yes, sir"? A. Yes, sir.

Q. About what day was that?

A. One or two days after this bid was opened.

Q. One or two days after this bid was opened. You heard the statement of Mr. Silverstone made here, a witness on behalf of the Government, that you came to him and said that one of your competitors was raising a kick, or raising a holler, I have forgotten the exact expression? A. Yes.

Q. Is that true or not?

A. That is true to a certain extent. I don't recall exactly what [742—691] I did say to Mr. Silverstone.

Q. He stated that you then requested him to go with him down to the office of Corder & Company and tell Corder that he, Silverstone, had heard over the telephone Mr. Corder discussing the amount of his bid; is that true or is it not true?

A. Yes, that is true.

Q. As a matter of fact, that was a false statement, wasn't it?

(Testimony of Emar Goldberg.)

A. That was a false statement; yes, sir.

Q. It was a false statement. But you went down then and saw Mr. Corder, and the conversation occurred approximately as testified to by Mr. Silverstone; is that right?

A. How was that? I didn't quite get it.

Q. (Question repeated.)

A. I don't get it yet.

Q. (Question repeated.)

A. Yes, that is true.

Q. You then stated, in the presence of Mr. Corder, it was stated by one of you, by Mr. Silverstone, I believe, that he had overheard a conversation over the telephone, and caused a sort of smile of merriment, didn't it, among the three of you?

A. It didn't exactly cause any smile of merriment; no, sir.

Q. But you knew, and Silverstone knew, that that statement was not true when it was made, didn't you, both of you? A. What statement?

Q. The statement which I have just called your attention to.

A. Regarding the telephone conversation?

Q. Yes.

A. Yes, Mr. Silverstone knew that was not true.

Q. You both knew it was not true?

A. Yes, sir. [743—692]

Q. Then thereafter the three of you repaired to some convenient emporium, and there had a little wine in celebration of this award, did you not?

A. It was not exactly in celebration of this award.

(Testimony of Emar Goldberg.)

Mr. Corder explained to me the original trouble that we had, and showed me what his idea of the transaction at that time was. I don't recall what it was now, but I was satisfied that Mr. Corder wasn't as bad as I thought he was, after all he was absolutely honest when he took the stand he did in regard to the \$50. Well, under those circumstances, I decided it was no more than fair, as long as we had been doing business together, he was entitled to half the profit the same as he had always been getting, and this time he would get them again, and that was the reason. And Mr. Corder said, "All right, Goldberg, let's go over and have a bottle of wine." There was no smile of merriment particularly.

Q. Mr. Goldberg, I understood you to say in your direct examination that Mr. Alper had stated to you the price of zinc was going up, the purchase of this car of zinc would be advantageous to your concern at that time. Was that substantially what he said?

A. No, sir, I never said that, Mr. Allen.

Q. What did you say with reference to the price of zinc at that time and its probable price in the future?

A. What I said was, that Mr. Alper and I talked over the matter of zinc. The subject arose owing to the fact there was a great deal of talk in the newspapers about this battleship fleet. Mr. Alper said to me, "Now, Goldberg, isn't it likely you will have an opportunity to sell something to the Government? The papers are all talking about the amount of money that the fleet is going to need here in Seattle.

(Testimony of Emar Goldberg.)

What do you think the firm can sell?" I said, "Mr. Alper, there is only one thing that is likely we might be [744—693] able to sell, and that is some more zinc. Every one of these ships in the battleship fleet will require some zinc, as I understand it, and they might call for some zinc." Well,—

Q. Well,—

A. I hadn't finished.

Q. Go ahead.

A. He says, "Why don't you buy a car?" I says, "I tell you, Mr. Alper, what I did do. We bought a car of zinc a short time ago, and I didn't like to buy another car without consulting you about it in the first place, and the next place, if the Government does require some zinc they might require sizes that we haven't purchased, then we would be just as well off as if we hadn't bought any zinc. Therefore I wrote a letter to Matheson & Heggler and asked them to keep the price open in order to have an option on a carload of zinc." Then he said to me, "Well, now, I tell you what you do. If the Government does call for any zinc, why, immediately that they call for it, the minute you hear they call for it,—"

Q. Pardon me, Mr. Goldberg, I asked you merely about what he said with reference to the price going up or down. You haven't yet gotten to that point.

A. I am just coming to that point, Mr. Allen.

Q. All right, go ahead.

A. He says, "The minute they call for that you wire and order this car, because you can't possibly

(Testimony of Emar Goldberg.)

lose any money, the price of zinc is low, and if the Government doesn't buy this carload of zinc you have got a carload of zinc at a very low price and the firm can't lost on it, on the transaction, and the probabilities are we will sell it later to some one else. It is good stock in any event." That was the conversation we had, Mr. Allen.

Q. I didn't ask you about the conversation, I asked you about that [745—694] particular part of it. So when you, Mr. Goldberg, inquired in the middle of March, 1908, in regard to a carload of zinc, you inquired as regards a carload of zinc 12 by 6 by 1½ inches, didn't you?

A. No, sir. I think if you will—have you the letter there?

Q. As a matter of fact, when you did order you ordered a car of that specific particular kind, didn't you? A. Yes, sir.

Q. You didn't order an assorted car which would include 24 by 30 and these other sizes?

A. No, sir.

Q. You ordered that particular kind and quantity of zinc?

A. Yes, sir. That was because the Government had asked for a car of that particular size. That was the most desirable size under any conditions.

Q. And there wasn't a car of zinc of that kind in the city, you testified? A. No, sir.

Q. This car of zinc cost you \$5.80 a hundred, is that right? A. \$5.80 a hundred at La Salle.

Q. You purchased later in the summer, not a car,

(Testimony of Emar Goldberg.)

but, I believe, a half car, 25,000 pounds, in the month of August, and that price which you paid for that half car of zinc was likewise \$5.80 a hundred, did you not?

A. I don't recall. The records probably show that.

Q. If the record does show that you would say that is true?

A. All metals are liable to advance or decline. There might be a decline or advance of a cent, or two cents, a pound in any metal any day.

Q. As a matter of fact, it hadn't advanced, had it?

A. It had not advanced. We really expected that it was going to [746—695] advance, though, at that time.

Q. But it did not advance? A. It did not, no.

Q. The gentleman who came here from Illinois, from Matheson & Heggler Zinc Company, testified that the capacity of his plant was about a hundred and fifty tons a day, or words to that effect. Do you recall that? A. Yes, sir.

Q. If any other firm in this city could buy the zinc at the same price on April 1st, 1908, and they could turn out a hundred and fifty tons a day, your option on 50,000 pounds, or twenty-five tons of zinc wouldn't be of very much value, would it, Mr. Goldberg?

Mr. SCHLESINGER.—That is not a proper question. The fact of the production does not mean an actual running production. It is not properly cross-examination and is calling for his opinion.

(Testimony of Emar Goldberg.)

The COURT.—The jury can consider that. Proceed. Exception.

A. You want me to answer that?

Mr. ALLEN.—Calling your attention to a bill of August 19, 1908. Do you recognize that billhead as that of Matheson & Heggler Zinc Company?

A. That is an invoice from Matheson & Heggler for half a car of zinc, about 25,000 pounds.

Q. Delivered to your people? A. Yes, sir.

Q. Great Western Smelting & Refining Company?

A. Yes, sir.

Q. August 29, 1908? A. Yes, sir.

Q. The price as quoted there is \$5.80 a hundred, cash discount [747—696] three per cent, is that right?

A. \$5.80, with a discount of six per cent.

Mr. ALLEN.—We offer that in evidence as part of plaintiff's exhibit.

Mr. SCHLESINGER.—Let me see it, please. (Examining same.) I have no objection.

The COURT.—What is it for?

Mr. ALLEN.—This is a statement rendered by Matheson & Heggler of August 19, 1908, to the Great Western Smelting & Refining Company for 26,760 pounds, mostly of $\frac{1}{2}$ by 6 by 12.

Mr. SCHLESINGER.—It occurs long after the alleged transaction, your Honor, and your Honor ruled out some of those.

The COURT.—“81” that will be.

(Paper referred to received in evidence and marked Plaintiff's Exhibit “81.”)

(Testimony of Emar Goldberg.)

Mr. ALLEN.—You said in your direct examination, Mr. Goldberg, that Kettlewell told you, as one of the reasons for asking you to come through to him, that other firms and concerns in the city of Seattle had made adequate financial arrangements with him. What concerns did he mention in that connection?

A. I didn't say that, Mr. Allen. What I said—

Q. Or words to that effect?

A. — other people had treated him right.

Q. Did he mention, or attempt to mention, to you any other concerns which had treated him right?

A. No, sir.

Q. Now, you had been doing business with Mr. Corder as a partner, we will assume that for the moment, in this zinc matter since away along in the summer preceding, that is, since 1907?

A. We had been doing business with him for some time previous to [748—697] that, but I don't recall exactly when that arrangement started. It was when he purchased the business of the Pacific Engineering Company.

Q. You have testified that the importunities of Mr. Kettlewell began in December, 1907. Now, during all the period from December, 1907, down to the consummation of this deal, that is, the sale of the car of zinc to the Government, you were then in close business relations with Mr. Corder, the other defendant here, were you not?

A. Why, I am under the impression that we were. I think we were out of zinc at one time.

Q. Oh, pardon me, you didn't understand the

(Testimony of Emar Goldberg.)

question. Read the question.

A. Yes, I did understand you. You asked me if we weren't in close business connections with Mr. Corder all that time.

Q. Close business relations.

A. Yes. I am under the impression there was one period of time there when neither of us had any zinc. I may be wrong about that.

Q. But I am talking about your general business relations with Mr. Corder. They were quite close during that period of time, isn't that true?

A. Yes.

Q. You said yes, as I understand you. Now, did you tell Mr. Corder, during these times that Mr. Kettlewell was importuning you for money, as you expressed it, did you tell Mr. Corder, the defendant sitting here, that this man Kettlewell was attempting to borrow and had borrowed, money from you?

A. No, sir, I never told that to Mr. Corder.

Q. Corder never knew that fact, then?

A. No, sir.

Q. You didn't tell him you had loaned him some money? A. No, sir. [749—698]

Q. Never charged that up against Corder?

A. No, sir.

Q. That was just Goldberg? A. Yes, sir.

Q. Goldberg's private speculation?

A. No, sir, no speculation.

Mr. ALLEN.—Your books show, I believe, that you delivered to the navy yard 59,575 pounds of zinc on this requisition 438. Is that right?

(Testimony of Emar Goldberg.)

A. Whatever the books show.

Mr. ALLEN.—Mr. Goldberg, did you ever at any time complain to the Paymaster of the Navy at Washington with reference to the mistreatment or the misconduct which you thought had been on the part of Mr. Kettlewell toward you, did you ever write to him? A. No, sir.

Q. You never did. Did you ever write to Mr. Spear and complain of the action of this man Kettlewell? A. No, sir.

Q. Did you ever communicate to Mr. Orr by writing or personally? A. No, sir.

Q. So whatever may have been the advice of Mr. Kerr to you with regard to it, it didn't result in your calling the matter to the attention of the properly constituted and responsible officers of the United States Navy; isn't that true?

A. No, sir. I explained the reason for that.

Q. Well, we will let the jury figure that out. Calling your attention, Mr. Goldberg, to what purports to be a letter, I ask you whether you can identify your signature to that letter.

A. Yes, sir, that is my signature.

The COURT.—Has that been marked? [750—699]

Mr. ALLEN.—Not yet, your Honor. We ask that be marked as Plaintiff's Exhibit "82."

(Paper referred to marked Plaintiff's Exhibit "82.")

Mr. KERR.—What is the date of it?

Mr. ALLEN.—That is August 13, 1908.

(Testimony of Emar Goldberg.)

Mr. KERR.—After the transaction?

Mr. ALLEN.—A little over a month after the transaction was closed.

Mr. KERR.—I don't think that is material or proper either, your Honor.

Mr. ALLEN.—Any objection to it?

Mr. KERR.—Yes, object to it on the ground that it is incompetent, irrelevant and immaterial, refers to matters long subsequent to the transaction.

The COURT.—I let matters in yesterday on the part of the defense as late as December of the same year. I did exclude, however, matters as late as 1910.

Mr. ALLEN.—It is the relation between Corder and Goldberg.

The COURT.—Very well. You might show it to Mr. Vanderveer.

Mr. VANDERVEER.—(Examining same.) No objection.

Mr. ALLEN.—This, gentlemen, is a letter under the head of Great Western Smelting & Refining Company of San Francisco, the Seattle headline, dated August 8, 1908. Matheson & Heggler Zinc Company, La Salle, Illinois. (Reading same to jury.)

Mr. KERR.—Now, your Honor, I move the jury be instructed to disregard that letter as being absolutely incompetent, irrelevant and immaterial to any issue in this case, and as absolutely improper, and I ask your Honor to read the letter.

(Testimony of Emar Goldberg.)

The COURT.—I don't see that the letter is material.

Mr. ALLEN.—He testified to their relations after this time in [751—700] April.

The COURT.—I don't think that would make any difference, any subsequent promise between these people. The jury is instructed to disregard the letter which was just read, and that will be withdrawn as an exhibit in the cause.

Mr. ALLEN.—Mr. Goldberg, in your direct examination you explained at length to this jury about the exacting specifications required on the part of the United States Government in the purchase of its material for the navy yard, did you not?

A. I don't think I did.

Q. Well, you covered that subject, I thought, quite extensively.

Mr. ALLEN.—Mr. Goldberg, were the navy yard authorities quarrelsome or exacting about the acceptance of a carload of zinc which you agreed to deliver in five days and actually delivered about twenty-five, in about twenty or twenty-five days, were they exacting in that case?

A. Not in that particular case, but there never was a man that ever sold anything to the United States Government who knew whether or not it was going to be accepted, rejected, sent back to him, or anything else done with it.

Mr. ALLEN.—Have you examined, Mr. Goldberg, this sheet prepared by Mr. House from your own books with reference to the sales made in small

(Testimony of Emar Goldberg.)

quantities to local merchants?

Mr. KERR.—I object to that on the ground it is not cross-examination in any sense at all. The witness' attention was not called to it, simply something that was prepared here by one of the Government's witnesses, and is not cross-examination and is improper.

Mr. ALLEN.—Will you kindly examine it at this time, this—

Mr. KERR.—Well, I haven't any objection to his examining it, but I will renew my objection on the ground it is not cross-examination, [752—701] not a document this witness has prepared.

The COURT.—It don't appear to be prepared by this witness.

On redirect examination by Mr. VANDERVEER the said witness testified as follows:

Q. You mentioned casually in your examination by one of counsel that it was at the suggestion of the Pacific Engineering Company that you first engaged in the zinc business? A. That is true.

Q. In what business was the Pacific Engineering Company engaged?

A. The Pacific Engineering Company was engaged in the sale of supplies to steamship companies.

Q. Steam engineering supplies?

A. Steam engineering supplies. Mr. C. B. Lamont was at the head of the company at that time.

Q. And this boiler zinc was an article which they handled in their business?

A. Oh, yes, it was in their regular line of business.

(Testimony of Emar Goldberg.)

Q. And was an article which previously you had never handled?

A. We had never handled. Mr. Lamont was the one who got us to handle a good deal of this boiler zinc.

Q. As I understand, the Pacific Engineering Company at that time was a small concern?

A. Yes, a comparatively small concern.

Q. And your concern was a large concern with a large credit? A. Yes, sir.

Q. And you found it mutually advantageous, did you, to engage in this business with them for the credit which you enjoyed and the customers which they had? [753—702]

A. I admired Mr. Lamont very much, and he suggested that we go into this zinc business. We would pay for the zinc, and I believe the first zinc that ever was purchased was stored at the Pacific Engineering Company's plant. The Great Western Smelting & Refining Company paid for it and the Pacific Engineering Company sold every pound of it, and that was at least a year, and possibly two years before a pound of zinc was ever sold to the Government to my knowledge.

Q. Now, in the year 1906, sometime in that year, Mr. Corder bought out the Pacific Engineering Company? A. Yes, sir. I don't recall that—

Q. He had previously been in the steam engineering supply business in San Francisco?

A. So I understand.

Q. And when he bought out that company he in-

(Testimony of Emar Goldberg.)

herited the business which you and they had built up in the zinc business?

A. The business that we had been doing through the Pacific Engineering Company and with the Pacific Engineering Company necessarily we then began to do with the W. A. Corder Company.

Q. Did Mr. Corder buy directly any of this zinc, or you did the buying, did you not?

A. I think that the Great Western Smelting & Refining Company was doing all the buying.

Q. And your concern was a concern that was acquainted with the metal nature of the business and acquainted with metal values and metal prices?

A. Yes, sir.

Q. Isn't it a fact, Mr. Goldberg, that it was quite a common thing for Mr. Corder, both in sales to the Government and in sales to private individuals, to call you up and ask you what zinc was worth? [754

—703] A. Oh, yes.

Q. Because of the knowledge which you had in the metal business?

A. It was a natural thing for him to do that. There might be a rise or decline of a cent a pound, or cent and a half a pound, in one day.

Q. The zinc which you handled your company bought from whatever concern you happened to be dealing with, using the Matheson-Heggler Company, and you billed Mr. Corder one-half of the cost of it?

A. As a rule.

Q. One-half the freight?

A. That was the agreement.

(Testimony of Emar Goldberg.)

Q. One-half of whatever expenses were entailed or incurred in handling it? A. Yes, sir.

Q. And you handled the matter as a partnership. It was not your custom, was it, to voucher those expenses? A. No.

Q. Nor his custom to require it?

A. No, sir. It was handled the same as any other deal was handled. Mr. Corder paid one-half the cost of the zinc and we credited his account with one-half the cost and charged him with one-half the freight, just the same as—

Q. It was an ordinary business transaction which had advantages to your concern in the—

A. It was a clean-cut business transaction that was advantageous to both concerns.

Q. The advantage to your concern was the fact that Mr. Corder had a clientele, or the Pacific Engineering Company, among the consumers of this zinc, was it not? A. Yes, sir. [755—704]

Q. And the advantage to his concern was that your concern had the credit which he did not?

A. Yes, sir.

Mr. VANDERVEER.—That is all.

On recross-examination by Mr. ALLEN the said witness testified as follows:

Q. Mr. Goldberg, did you or did you not tell Mr. Corder, on the 11th day of April, 1908, that you had ordered a car of zinc from La Salle, Illinois, by telegraph, in which he was interested one-half?

A. I did not.

(Testimony of Emar Goldberg.)

Q. You did not. Did Corder know that you had ordered that car of zinc at that time?

A. He did not.

Q. When did he learn that fact?

A. He learned that fact on about the 17th, or a day, or two, or three days, I don't recall when it was, after the bids were opened, when we had that talk and agreed to be friends from that time.

Q. Did you communicate with Mr. Corder, or is it a mere coincident, that you put in a bid for this zinc at \$12.50, and Mr. Corder, your copartner, prior thereto, put in a bid at \$12.60?

A. We probably talked that thing over. I don't recall whether we did. We probably did.

Q. And you decided to put in a bid at \$12.50 and he was going to put in a bid at \$12.60?

A. Yes, sir.

Mr. ALLEN.—That is all. [756—705]

On recross-examination by Mr. VANDERVEER the said witness testified as follows:

Q. Mr. Corder left the purchasing of zinc to you?

A. Entirely.

Q. In all instances? A. Yes, sir.

Q. Didn't require any consultation with you, didn't feel he knew anything about the price, or time to buy, or the terms to buy? A. That is true.

Mr. VANDERVEER.—That is all.

Mr. SHIPLEY.—Your Honor please, at this time here are a few of these folders we did not complete the identification of the other day. Mr. House will kindly take the stand again.

[Testimony of Hiram S. House, for Defendants
(Recalled).]

HIRAM S. HOUSE, recalled as a witness on behalf of the defendants, further testified as follows:
(By Mr. SHIPLEY.)

Mr. RIDDELL.—Just identify the whole business at once, Mr. House.

Mr. SHIPLEY.—Those are folders he bought in at our request.

The COURT.—Take the stand, Mr. House, or are you identifying them now?

Mr. HOUSE.—Yes, sir.

Mr. SHIPLEY.—Folder *contain* contract No. 7104 with the Schwabacher Building Company—

The COURT.—Contract number what?

Mr. SHIPLEY.—No. 7104, dated October 17, 1907. We would like to have that identified.

(Folder referred to marked Defendant's Exhibit A-49 for Identification.) [757—706]

Open Purchase requisition No. 5, series 1909, dated June 27, 1908.

(Folder referred to marked Defendant's Exhibit A-50 for Identification.)

These two exhibits just handed to Mr. House, he states were received by him from the General Storekeeper's Office at the navy yard this morning. The three remaining are those that he has had in his custody something like two years. One, Open Purchase Requisition No. 169, series 1910, February 12, 1910.

(Testimony of Hiram S. House.)

(Folder referred to marked Defendant's Exhibit A-51 for Identification.)

The next is Open Purchase Requisition No. 25, Series 1910, date May 7, 1910.

(Folder referred to marked Defendant's Exhibit A-52 for Identification.)

The next is Open Purchase Requisition No. 481, Series 1908, dated April 14, 1908.

(Folder referred to marked Defendant's Exhibit A-53 for Identification.)

Mr. SHIPLEY.—That is all your Honor.
(By Mr. SCHLESINGER.)

Q. Mr. House, I will show you a folder bearing the caption Series 1908—

The COURT.—Have those been identified?

Mr. SCHLESINGER.—No, your Honor, we haven't had time.

The COURT.—Can't Mr. House take these and examine them and come in here to-morrow morning and have them all marked?

Mr. HOUSE.—I will identify them all now. [758—707]

The COURT.—Suppose you do that and give the marks to the clerk. It will save a lot of time.

Mr. ALLEN.—The witness states he has had these nearly two years and a half, and he received them from the Navy Pay Office in Seattle; all of them?

Mr. HOUSE.—Yes, sir.

The COURT.—All right, then, start in and just dictate to the stenographer and to the clerk here the identification and have them marked.

(Testimony of Hiram S. House.)

The WITNESS.—Requisition No. 463—shall I say it is Navy Pay Office folder each time?

The COURT.—It is Navy Pay, all Navy Pay?

A. Yes, sir.

The COURT.—All right, all Navy Pay Office folders? A. Yes, sir.

The COURT.—Series? A. 1908; April 9, 1908.

(Folder referred to marked Defendant's Exhibit A-54 for Identification.)

Requisition No. 6, Series of 1909, dated November 13, 1908.

(Folder referred to marked Defendant's Exhibit A-55 for Identification.)

Requisition 466, Series 1908, dated April 11, 1908.

(Folder referred to marked Defendant's Exhibit A-56 for Identification.)

No. 374, Series 1908, dated March 9, 1908.

(Folder referred to marked Defendant's Exhibit A-57 for Identification.)

Requisition No. 20, Series 1908, dated August 5, 1907. [759—708]

(Folder referred to marked Defendant's Exhibit A-58 for Identification.)

Requisition No. 181, Series 1908, dated November 26, 1907.

(Folder referred to marked Defendant's Exhibit A-59 for Identification.)

Requisition No. 102, Series of 1909, dated July 18, 1908.

(Folder referred to marked Defendant's Exhibit A-60 for Identification.)

(Testimony of Hiram S. House.)

No. 430, Series of 1908, dated March 30, 1908.

(Folder referred to marked Defendant's Exhibit A-61 for Identification.)

Requisition No. 266, Series of 1908, dated January 22, 1908.

(Folder referred to marked Defendant's Exhibit A-62 for Identification.)

Requisition No. 404, Series of 1908, dated March 20, 1908.

(Folder referred to marked Defendant's Exhibit A-63 for Identification.)

Requisition No. 439, Series of 1908, dated April 1st, 1908.

(Folder referred to marked Defendant's Exhibit A-64 for Identification.)

Requisition No. 323, Series 1908, dated February 15, 1908.

(Folder referred to marked Defendant's Exhibit A-65 for Identification.)

Requisition No. 641, Series of 1908, dated May 22, 1908.

(Folder referred to marked Defendant's Exhibit A-66 for Identification.)

Requisition No. 100, Series 1909, dated July 18, 1908.

(Folder referred to marked Defendant's Exhibit A-67 for Identification.)

Requisition No. 101, Series of 1909, dated July 18, 1908. [760—709]

(Folder referred to marked Defendant's Exhibit A-68 for Identification.)

(Testimony of Hiram S. House.)

Requisition No. 201, Series 1909, dated August 12, 1908.

(Folder referred to marked Defendant's Exhibit A-69 for Identification.)

Requisition No. 202, Series 1909, dated August 12, 1908.

(Folder referred to marked Defendant's Exhibit A-70 for Identification.)

Requisition 241, Series of 1909, dated August 22, 1908.

(Folder referred to marked Defendant's Exhibit A-71 for Identification.)

Requisition No. 15-L, Series 1911, dated July 22, 1910.

(Folder referred to marked Defendant's Exhibit A-72 for Identification.)

Requisition No. 54-L, Series 1911, dated September 22, 1910.

(Folder referred to marked Defendant's Exhibit A-73 for Identification.)

Requisition No. 10, Series 1911, dated June 20, 1911.

(Folder referred to marked Defendant's Exhibit A-74 for Identification.)

Requisition No. 12, Series 1911, dated June 24, 1910.

(Folder referred to marked Defendant's Exhibit A-75 for Identification.)

Requisition No. 159, Series 1910, dated February 4, 1910.

(Testimony of Hiram S. House.)

(Folder referred to marked Defendant's Exhibit A-76 for Identification.)

Requisition No. 158, Series 1910, dated February 3, 1910.

(Folder referred to marked Defendant's Exhibit A-77 for Identification.)

Requisition No. 4, Series 1909, dated July 20, 1908.
[761—710]

(Folder referred to marked Defendant's Exhibit A-78 for Identification.)

Requisition No. 43, Series 1909, dated June 25, 1908.

(Folder referred to marked Defendant's Exhibit A-79 for Identification.)

Requisition No. 84, Series 1909, dated July 10, 1908.

(Folder referred to marked Defendant's Exhibit A-80 for Identification.)

Requisition No. 92, Series 1909, dated July 13, 1908.

(Folder referred to marked Defendant's Exhibit A-81 for Identification.)

Requisition No. 99, Series 1909, dated July 18, 1908.

(Folder referred to marked Defendant's Exhibit A-82 for Identification.)

Requisition No. 107, Series 1909, dated July 20, 1908.

(Folder referred to marked Defendant's Exhibit A-83 for Identification.)

(Testimony of Hiram S. House.)

Requisition No. 124, Series 1909, dated July 24, 1908.

(Folder referred to marked Defendant's Exhibit A-84 for Identification.)

Requisition No. 133, Series 1909, dated July 22, 1908.

(Folder referred to marked Defendant's Exhibit A-85 for Identification.)

Requisition No. 147, Series 1909, dated July 29, 1908.

(Folder referred to marked Defendant's Exhibit A-86 for Identification.)

Requisition No. 151, Series 1909, dated July 30, 1908.

(Folder referred to marked Defendant's Exhibit A-87 for Identification.)

Requisition No. 154, Series 1909, dated July 31, 1908. [762—711]

(Folder referred to marked Defendant's Exhibit A-88 for Identification.)

Requisition No. 177, Series 1909, dated April 8, 1909.

(Folder referred to marked Defendant's Exhibit A-89 for Identification.)

Requisition No. 238, Series 1909, dated August 21, 1908.

(Folder referred to marked Defendant's Exhibit A-90 for Identification.)

Requisition No. 279, Series 1909, dated September 11, 1908.

(Folder referred to marked Defendant's Exhibit

(Testimony of Hiram S. House.)

A-91 for Identification.)

Requisition No. 280, Series 1909, dated September 12, 1908.

(Folder referred to marked Defendant's Exhibit A-92 for Identification.)

Requisition No. 314, Series 1909, dated September 30, 1908.

(Folder referred to marked Defendant's Exhibit A-93 for Identification.)

Requisition No. 330, Series 1909, dated October 6, 1908.

(Folder referred to marked Defendant's Exhibit A-94 for Identification.)

Requisition No. 507, Series 1909, dated March 4, 1909.

(Folder referred to marked Defendant's Exhibit A-95 for Identification.)

This is a yard folder.

The COURT.—Navy yard?

A. Yes, sir, navy yard folder for Requisition No. 494, Series of 1909, dated January 23, 1909.

(Folder referred to marked Defendant's Exhibit A-96 for Identification.)

Now, there is one other folder that Mr. Schlesinger asked me for [763—712] that I couldn't lay my hands right on.

The COURT.—One more?

A. Yes. I didn't have time to make an extended search for it.

The COURT.—Very well.

Mr. VANDERVEER.—If the Court please, if I

(Testimony of Ed. L. Terry.)

may be permitted, I would like to call a witness here, Mr. Terry, the City Treasurer.

The COURT.—Very well.

[Testimony of Ed. L. Terry, for Defendants.]

ED. L. TERRY, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. VANDERVEER.)

Q. Your name is Ed. L. Terry? A. Yes, sir.

Q. You live in this city? A. Yes, sir.

Q. About how long, Mr. Terry?

A. I was born here.

Q. About how long ago is that?

A. 51 years ago.

Q. You are present City Treasurer of this city?

A. Yes, sir.

Q. You know Mr. W. A. Corder, one of the defendants in this case? A. I do.

Q. About how long have you known him, Mr. Terry? A. Oh, I think for six or seven years.

Q. You knew him before June 1st, 1911. You know what his reputation was in this community for honesty and integrity [764—713] at that time?

A. When was this, you say?

Q. Well, prior to the indictment in this case, prior to June 1st, 1911, do you know what his reputation in the community was for honesty and integrity, and is now for that matter? A. I do.

Q. What is it? A. It is good.

Mr. VANDERVEER.—Cross-examine.

(Testimony of Ed. L. Terry.)

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. You don't know anything about his relations with the United States Navy Yard, do you?

A. I do not.

Mr. VANDERVEER.—That is not cross-examination, your Honor. I object. A man's reputation is what the community thinks of him in the community where he lives.

Mr. ALLEN.—That is all.

Mr. MORRIS.—May it please your Honor, at this time, with a view of saving time, there is an exhibit that was offered in case 2042, the former trial of the defendant, Meyer, being No. 61, in the possession of the Government, or in the files of this court. At this time we would like to have an order of Court, directing that Mr. House deliver to us, or bring into court, Plaintiff's Exhibit "61."

Mr. ALLEN.—Here it is. (Handing counsel exhibit.)

Mr. HOUSE.—Your Honor, they asked for a folder that I didn't find [765—714] yesterday afternoon. I would like to identify this one, so it can go in with this other page I put in yesterday.

By the COURT.—That would be A-97.

Mr. HOUSE.—This is Navy Pay Office Folder No. 247, Navy Pay Office Requisition No. 247, Series of 1909, dated August 26, 1908.

Mr. SCHLESINGER.—If your Honor please, the bonus account introduced in evidence by the Government omits to include certain items, running

(Testimony of Ed. L. Terry.)

from February 17, 1912, down to November 7, 1912, and omits the item of July 8 of the preceding year.

Mr. ALLEN.—What year?

Mr. SCHLESINGER.—1911, so these items I wish to read in evidence now as a part of that bonus account.

“July 8, check 8939, folio 61, \$110. February 17, 1912, check 1045, folio 155, \$50. June 17, 10691, folio 58, \$50. October 23, 1912, check 11,295, \$250. November 7, check 11,370, folio 114, \$85. Total, \$385.” We ask that be added to the bonus account.

I wish also to make the statement in that connection, that the indictment in this case was filed on May 31, 1911.

Mr. ALLEN.—I object to your making that statement.

Mr. SCHLESINGER.—I would like to have the jury look at those items. The items were omitted—I don’t say they were intentionally omitted—I think Mr. House overlooked them. The latter part of it may go in as an exhibit.

(Whereupon said items were introduced in evidence, and marked Plaintiff’s Exhibit A-98.)

[Testimony of Francis G. Frink, for Defendants.]

FRANCIS G. FRINK, produced as a witness on behalf of the defendants, testified as follows, to wit:

Direct Examination by Mr. SCHLESINGER.

Q. State your name. [766—715]

A. Francis G. Frink.

Q. Where is your residence? A. Seattle.

(Testimony of Francis G. Frink.)

Q. How long have you lived here? A. 368—

Q. What is your vocation or occupation?

A. Manufacturer.

Q. With what concern, if any, are you connected?

A. Washington Iron Works.

Q. Do you know Mr. Emar Goldberg?

A. Yes, sir.

Q. How long, please, have you known him?

A. About ten or eleven years.

Q. Have you had many business relations with him?

A. Yes, sir, our company has done a great deal of business with him during that time.

Q. Talk a little louder.

A. I say, our company has done considerable business with him since that time, during that time.

Q. Founded on verbal arrangements and otherwise?

A. Yes, sir, we have done a great many thousands of dollars worth of business, upon verbal agreements alone.

Q. Have you had opportunities of observing his conduct generally? A. Yes, sir.

Q. Knowing him in that way, for that length of time, do you know his general reputation in this city for the qualities of truth, of honesty and of integrity? A. Yes, sir, it is good.

Mr. ALLEN.—I move to strike that answer out and confine it to truth and veracity. [767—716]

By the COURT.—That answer will be stricken;

(Testimony of Francis G. Frink.)

the jury are instructed not to consider at all the answer as made.

Q. Is that reputation good or bad?

Mr. ALLEN.—Without the preliminary question, you are not entitled to answer it.

Q. Do you know the general reputation of Emar Goldberg in this city for the qualities of truth, honesty and integrity. Say yes or no. A. Yes.

Mr. ALLEN.—I object to that for the same reason. He can confine the witness to the question as to his truth and veracity.

(Argument by counsel.)

(Question withdrawn.)

Q. Do you know his general reputation in this city for the qualities of honesty and integrity?

A. Yes, sir.

Q. Is that general reputation good, or is it bad?

A. It is good amongst my line of trade, yes, sir.

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. The question propounded to you involved a present time and a present meaning. He asked you as to whether or not the reputation of this man was good, in your opinion, and you answered that it was good in your particular line of business. Are you answering now with reference to the year 1908 or the year 1913?

A. I am answering for my whole acquaintance with Mr. Goldberg.

Q. During the entire time?

(Testimony of Francis G. Frink.)

A. The entire period up to date.

Q. Now, your acquaintance with him, and your experience with him, is confined to the purchase of material, probably from his plant, isn't that so, for use in the Washington Iron Works? [768—717]

A. Yes, sir, and a general acquaintance.

Q. Your contact with him is in your line of business. You don't know anything about his experience in bidding on Government contracts, do you?

A. No, sir.

Mr. SCHLESINGER.—I object to that as not being proper cross-examination. I move to strike out the answer, if your Honor please, as well as the question.

By the COURT.—No, I think it may stand. Motion overruled. Exception allowed.

Q. Did you ever hear Sarah Rubenstein, who is the widow of Mr. Rubenstein, who ran the American Iron & Metal Company, did you ever discuss with her the honesty and integrity of the defendant, Goldberg, who was sitting here a moment ago?

Mr. SCHLESINGER.—I object to that on the ground it is not competent cross-examination.

By the COURT.—He may answer. OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. I don't know such a party.

Q. You remember the American Iron & Metal Company, that used to be down here on Second Avenue? A. No, sir.

Q. You never discussed that matter with Mrs. Rubenstein then at any time, as I understand?

(Testimony of Francis G. Frink.)

A. I don't know her at all.

Q. You never discussed the question of his probity or integrity with any official of the United States Government, did you? A. No, sir.

Mr. SCHLESINGER.—I object to that as not being proper cross-examination. [769—718]

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

Q. Your experience with Mr. Goldberg, then, is confined to an experience covering a number of years, in the purchase of material from the Great Western Smelting & Refining Company, isn't that true?

A. Yes, general acquaintance extending over that period.

Q. In other words, you are basing, of course, your statement to the jury, upon the fact that Mr. Goldberg never double-crossed you, or anything of that sort?

Mr. SCHLESINGER.—I object to that, and charge improper conduct upon the part of the District Attorney.

By the COURT.—I think the question, in the way it is propounded, is objectionable. The jury are instructed not to consider the question.

Q. Who did you ever hear discuss the matter of Mr. Goldberg's probity, integrity, honesty and a few other qualities?

A. You mean in connection with this case?

Q. No, in connection with any matter.

A. Why, I think I have discussed it with other

(Testimony of Francis G. Frink.)

people, in our trade, as to his character, at different times.

Q. You think, but at this time you are not positive you have?

A. Well, I couldn't say as to that. My opinion as to Mr. Goldberg is based upon personal contact, personal experience with him, as anyone would judge—

Q. Just the fact that he never gave you the worst of it, in selling supplies—

Mr. SCHLESINGER.—That is a repetition of a highly improper question, and counsel knows it and ought to know— A. No.

By the COURT.—He may answer that question. OBJECTION OVERRULED: [770—719] EXCEPTION ALLOWED.

On redirect examination by Mr. SCHLESINGER the said witness testified as follows:

Q. You have testified, in a word, that you have had with Mr. Goldberg, large transactions, covered by verbal agreements?

Mr. ALLEN.—I *objection* to that as being gone over in the direct examination.

[Testimony of John C. Slater, for Defendants.]

JOHN C. SLATER, produced as a witness on behalf of the defendants, having been first duly sworn, testified as follows, to wit:

Direct Examination by Mr. VANDERVEER.

Q. State your name. A. John C. Slater.

Q. You live in the city of Seattle? A. Yes, sir.

Q. What is your occupation?

(Testimony of John C. Slater.)

A. Financial broker.

Q. How long have you lived in this city?

A. Fifteen years.

Q. How long have you been in this business?

A. About ten years.

Q. You have, at times, occupied positions of public confidence, to which you were elected by the people, or a portion of the people, of the city?

A. I have held no public office.

Q. I don't mean public office, position of public confidence? [771—720]

A. You may call it that.

Q. What were they?

A. I am Trustee and Vice-President of the Chamber of Commerce, at the present time.

Q. You were president of the Tilikums here, were you not? A. I still am.

Q. Do you know Arthur Corder? A. Yes, sir.

Q. How long have you known him?

A. Ever since he came to the city.

Q. What has been the nature of your acquaintance with him? A. Purely personal.

Q. Do you know a number of his friends and acquaintances? A. Yes, sir.

Q. You mingle, in other words, in the same business and social circles, formerly did? A. Yes.

Q. Do you know his reputation in this community, for honesty and integrity? A. Yes.

Q. What is it? A. It is good.

(Testimony of John C. Slater.)

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. With whom did you ever discuss the question of the integrity of Mr. Corder? A. No one.

Q. That frame of mind of yours, then, seems to be based upon the fact of your personal experience with him, is that true? A. Yes. [772—721]

Q. The fact Mr. Corder has never mistreated you in any way, that is the reason for your statement that you know his reputation; is that right?

A. He has always been an honored guest in my family.

Q. Personal friend, relationship?

A. Personal friend, yes.

On redirect examination by Mr. VANDERVEER the said witness testified as follows:

Q. Did you ever discuss counsel's reputation with anybody?

Mr. ALLEN.—Which counsel?

Q. You. Did you hear him discussed?

A. I have not.

Q. Have you any doubt whether it is good or bad?

Mr. ALLEN.—I object to that.

By the COURT.—OBJECTION SUSTAINED: EXCEPTION ALLOWED.

On redirect examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Do you know Mr. Goldberg here?

A. I know Mr. Goldberg; yes, sir.

Q. How long have you known him?

A. I should say five or six years, maybe longer.

(Testimony of John C. Slater.)

Q. Do you know the general reputation of Mr. Goldberg for the qualities of honesty and integrity?

Mr. ALLEN.—I wish he would confine it to 1908.

By the COURT.—Yes, give him the time.

Q. Have you known and do you know his general reputation during the five or six years that you have known him? A. Yes. [773—722]

Q. Would you say that general reputation to be good or bad, for those qualities?

A. I should say, good.

On recross-examination by Mr. ALLEN the said witness testified as follows:

Q. You have known the defendant, Goldberg, you answered, five or six years. Refresh your recollection, now, was it five or was it six years ago that you first met him?

A. I couldn't say that. My acquaintance with him has been purely personal, along fraternal and social lines.

Q. Did it begin, then, in 1908, or did it possibly begin after 1908? A. I couldn't say that.

Q. You wouldn't say positively it began before 1908, would you?

A. I think probably shortly after his arrival here, I met him.

Q. You think, probably, shortly after his arrival you met him? A. Yes, sir.

Q. With whom did you ever discuss the question of the probity or integrity of Mr. Goldberg?

A. No one.

Q. No one has ever discussed the matter with you?

(Testimony of John C. Slater.)

A. No, sir.

Q. You are basing your conclusion upon the fact of your own personal, social contact with Goldberg; is that right? A. Yes, sir.

Q. It isn't based upon any general reputation you got from inquiry, anything of that sort?

A. Oh, no. [774—723]

[Testimony of James F. Lane, for Defendants.]

JAMES F. LANE, having been first duly sworn, testified as follows on behalf of the defendants.

Direct Examination by Mr. VANDERVEER.

Q. State your name. A. James F. Lane.

Q. What is your business? A. Banker.

Q. With what bank are you connected?

A. Scandinavian-American Bank.

Q. In what capacity? A. Cashier.

Q. How long have you been with that bank?

A. About fifteen years.

Q. You are acquainted with W. A. Corder, the defendant here? A. Yes, sir.

Q. How long have you known him?

A. Some six or seven or eight years.

Q. What has been the character of your acquaintance with him?

A. Personal and business, in a business way also.

Q. He did business with your bank?

A. Yes, sir.

Q. And you, as cashier of the bank, at that time had occasion to loan him money? A. Yes, sir.

Q. And to investigate his credit and his personal

(Testimony of James F. Lane.)

and financial responsibility?

A. I did. [775—724]

Q. And discuss it with your Board of Directors?

A. Yes, sir.

Q. And with the other people in the bank?

A. Yes, sir.

Q. In that same connection you came in contact with some of his business associates, people with whom he did business, at least? A. Yes, sir.

Q. Do you know what his reputation in this community is for honesty and integrity?

Mr. ALLEN.—That is Corder?

Q. Mr. Corder? A. I do, yes, sir.

Q. What is it? A. Very good.

On cross-examination by Mr. ALLEN, the said witness testified as follows:

Q. Mr. Lane, your conversation in regard to Mr. Corder was confined to comments made to your Board of Directors, did I understand you to say?

A. I don't understand the question.

Q. Your conversations in regard to Mr. Corder were with the members of your own bank, the trustees of your own bank, did I understand you to say?

A. Largely so; yes.

Q. You have never made any more inquiry in regard to Mr. Corder than you have in regard to the probable two thousand depositors you have in your bank, have you?

A. Yes, more so, because he was a borrower, while the two thousand probably were not all of them.

[776—725]

(Testimony of James F. Lane.)

Q. No more inquiry than you would make in the case of any man who borrowed money from you?

A. That is true.

Q. Just about the same? A. I think so.

Q. You would very cheerfully make the same statement, probably, in regard to practically every man who borrowed money from the bank, during that same period of time?

A. We wouldn't loan them the money unless we thought their reputation was good and standing O. K.

On redirect examination by Mr. SCHLESINGER the said witness testified as follows:

Q. I would like to ask you a question, do you know Mr. Goldberg, Mr. Lane? A. Yes, sir.

Q. And how long please, have you known him?

A. Some five or six years, maybe more.

Q. Has he had dealings with your bank?

A. Yes, we have had business relations with Mr. Goldberg and the company.

Q. He has been an endorser, has he not, on notes in your bank? A. Yes, sir.

Q. You had frequent opportunities of observing him in financial matters, have you? A. Yes, sir.

Q. Do you know his general reputation for the qualities of honesty and integrity, during that particular length of time? A. Yes, sir. [777—726]

Q. Would you consider it good or bad?

A. Good.

On recross-examination by Mr. ALLEN the said witness testified as follows:

Q. Mr. Lane, with whom did you ever discuss the

(Testimony of James F. Lane.)

question of the integrity or probity of the defendant, Goldberg.

A. On one occasion with the officers of the National Bank of Commerce.

Q. With the officers of the National Bank of Commerce? A. Mr. Stacy.

Q. He was keeping an account down with you and also up at the other place, was he?

A. At that time he kept, maintained the account of the Great Western Smelting & Refining Company, I think, with the National Bank of Commerce. The account of the Great Western Lumber Company, of which he was President and principal stockholder, was with our bank.

Q. He kept his personal account, didn't he, for the time, down in your bank?

A. I am not sure of that. I think not.

Q. Did he keep, and does he keep to-day, an account in your bank? A. I believe not.

Q. Or did he for a long period of years?

A. For the Great Western Lumber Company.

Q. With whatever person, outside of some friend of yours in the bank, did you ever discuss the question of the general reputation of this man, for honesty or integrity, anything of that sort?

A. No one I know of. There was no occasion to.
[778—727]

Q. Your cheerful testimony here before this jury, as to the general reputation of the man, in the community in which he lives, is based upon a conversation of some years ago, with some officer in another bank,

(Testimony of James F. Lane.)

and talk among yourselves down there in your own institution, is that right? A. Not by any means.

Q. I understood you to say so?

A. That is a basis for part of my confidence in Mr. Goldberg. He has been my neighbor, lived near me several years. I have known him personally.

Q. How long did he live next to you?

A. About four or five years, I guess, probably four years.

Q. And Mr. Goldberg is charged with a crime here, and you are very glad to come up and help him out of trouble, isn't that true?

A. I would be very glad to testify for Mr. Goldberg, as I know him.

Q. He has never put in, so far as your personal acquaintance with him goes, he has never put in duplicitous or two bids to the United States Government, has he, for contracts? A. Not at all.

Q. You never had that experience with him, have you? A. No, sir.

Q. You never came in contact with him in reference to the complaint of Mrs. Rubenstein, in regard to her estate, did you? A. I know nothing of it.

Mr. SCHLESINGER.—I object to that and charge misconduct, knowing misconduct upon the part of counsel in the repetition of that question.

Q. Your testimony in regard to this man, then, is based upon your own experience with him, the fact he paid his obligation at your [779—728] bank, and the fact that, living next to him as a neighbor, you never came in contact with any wrongdoing of

(Testimony of James F. Lane.)

his, isn't that right? A. Largely so, yes, sir.

On redirect examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Mr. Lane, you pretty well know the borrowing customers of your bank, do you not?

A. I think so.

Q. You know whether they are worthy of credit, or otherwise, do you not? A. I think so.

On recross-examination by Mr. ALLEN the said witness testified as follows:

Q. The fact that you loan a man money and he pays it, that is sometimes done by men who are not honest, isn't that true—many men who borrow money from your bank, and return the money, are not honest, isn't that true?

A. I don't think so; no, sir. I think the contrary is true.

Q. Don't you know that is true in life, generally?

A. There are exceptions to all rules.

Q. That lots of crooks, for the purpose of safety, will pay their obligations in many cases, don't you know that to be true?

A. No, I don't know that to be true, but from personal observation.

Q. You have had lots of personal observation of men who didn't pay their notes in your bank?

A. They were honest, sometimes, too.

Q. Wouldn't you reason, in that way, in many cases dishonest men do [780—729] pay their notes at your bank? A. I presume that is true.

[**Testimony of Milton E. Damm, for Defendants.**]

MILTON E. DAMM, a witness produced on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. MORRIS.

Q. State your name. A. Milton E. Damm.

Q. You are the son of A. S. Damm?

A. Yes, sir.

Q. A. S. Damm is now deceased, is he?

A. Yes, sir.

Q. When did A. S. Damm die?

A. July 17, 1911.

Q. In this city?

A. En route east; he was on his way east.

Q. Previous to the time of his death, he was a resident of Seattle, was he? A. Yes, sir.

Q. Actively engaged in business in this city?

A. Yes, sir.

Q. And at the present time are you settling up your father's estate? A. Yes, sir.

Q. You have been delegated by the Governor of this State as State's Representative to the National Conservation Convention, which convenes in Washington City? [781—730]

A. Yes, sir; this month.

Q. And you leave for the east to-day?

A. To-night.

Mr. ALLEN.—I object to all this matter. I don't see how it is relevant.

By the COURT.—Proceed. I presume counsel

(Testimony of Milton E. Damm.)

are about through with it.

Mr. MORRIS.—I maintain the question is proper in every respect.

Q. Are you acquainted with the defendant, Ed. M. Meyer? A. Yes, sir.

Q. About when did you become acquainted with the defendant?

A. When I entered the Government service in 1908, spring.

Q. Where?

A. Navy Yard, Puget Sound, Washington.

Q. At Bremerton? A. Yes, sir.

Q. Was Mr. Meyer at said time in the employ of the Navy Department? A. Yes, sir.

Q. Of the Navy, at Bremerton? A. Yes, sir.

Q. And what was his relation, if any, to you, during the time—at the time that you entered the employ of the Storekeeper's Office at the navy yard?

A. I was his assistant.

Q. You were his assistant? A. Yes, sir.

Q. And what was the relationship, how close were you associated together in the office, physically—were you far apart or close together, as far as your desks—

A. About three feet apart. We faced each other.
[782—731]

Q. And you worked in the Storekeeper's Department of the navy yard, for how many months, under Mr. Meyer? A. About four years.

Q. Did you continue in the employ of the Government after Mr. Meyer left the employ of the Store-

(Testimony of Milton E. Damm.)

keeper's Department? A. Yes, sir.

Q. During the time that you were working with Mr. Meyer, did you become acquainted with Mr. Meyer's associates at the Puget Sound navy yard?

A. Yes, sir.

Q. Are you able to state, from your acquaintance with the persons with whom Mr. Meyer associated, whether or not you know Mr. Meyer's general reputation? A. Yes, sir.

Q. During the time that you associated with him, for truth and veracity, honesty and straightforward business dealings? A. Yes, sir.

Q. Was that reputation good, or was it bad?

A. Very good, sir.

Q. Do you know, do you remember a trial through which this defendant passed in this Court about a year ago?

Mr. ALLEN.—I object to that.

By the COURT.—He may answer.

A. Yes, sir.

Q. Do you know in whose employ Mr. Meyer is at the present time, and in whose employ he has been during the greater part of the time since said trial?

A. Yes, sir.

Q. In whose? A. My employ, sir. [783—732]

Q. I now direct your attention to Plaintiff's Exhibit "61" in case 2042, being the case in which the defendant was tried in this court about a year ago, and I call your attention especially to this photographic copy of a note. Just take a look at it, will you please?

(Testimony of Milton E. Damm.)

Mr. ALLEN.—Is it a note or a check?

Mr. MORRIS.—A check. Excuse me, I meant check.

Q. You needn't state what it is. Do you know what the paper or the exhibit which I have just handed you is? Don't say what it is, do you know what it is? A. Yes, sir.

By the COURT.—What is the number of it?

Mr. MORRIS.—It is Plaintiff's Exhibit "21" in cause 2042. It hasn't an exhibit number in this case yet. You have no objection to its being introduced in evidence?

By the COURT.—Let it be marked.

(Whereupon said check was offered in evidence and marked Defendant's Exhibit A-99, for Identification.)

Mr. ALLEN.—Do I understand he is offering it at this time?

By the COURT.—This is the identified exhibit No. A-99 in this cause, and the offer at this time is denied. You will have the opportunity of reoffering it, if occasion arises.

Q. Again directing your attention to Defendant's Exhibit A-99 for identification, I will ask you to examine the note, or the photographic copy of the check attached thereto, and state to the jury, if you can, in whose handwriting the endorsement, "Priest Rapids Fruit & Land Company, by A. S. Damm, Manager," is? A. My father

(Testimony of Milton E. Damm.)

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. Mr. Damm, you were a Government employee beginning at what time, [784—733] what year?

A. April, 1908.

Q. Your relations with the defendant, Meyer, were physically quite close, as I understand it?

A. Yes, sir.

Q. Socially they were so close that during a period of some two or three years, you, during that period of time, nearly every day went to lunch and had lunch with Mr. Meyer, were they not?

A. About four of us, yes, sir.

Q. You were a member of the party with Mr. Meyer?

Q. And after Meyer was arrested, and left the navy yard, he went to work with the land company in which you and he are both interested, isn't that true? A. No, sir.

Q. He is not interested in it? Weren't you both interested in this Priest Rapids concern, referred to here in this check shown you by counsel?

A. He had nothing to do with it, sir.

Q. He never had anything to do with it?

A. No, sir.

Q. Didn't he, as a matter of fact, own at least one share of stock in that company? A. No, sir.

Q. Is that a fact, or not?

A. The stock is made out to him, but it has never been paid for.

Q. You don't know whether there is any corre-

(Testimony of Milton E. Damm.)

spondence, then, between Mr. Kettlewell and Mr. Meyer, in reference to his investing in land there in that locality, do you?

Mr. MORRIS.—I object to that on the ground it is not proper cross-examination. [785—734]

Q. Do you understand the question?

A. Yes, sir.

Mr. MORRIS.—It is irrelevant and immaterial.

By the COURT.—He can answer that yes or no.
OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. I have never seen any correspondence.

Q. I asked you whether you knew—not whether you had seen any—whether you knew of any correspondence? A. No, I don't.

Mr. MORRIS.—I move your Honor at this time to strike from the record the question and answer of the District Attorney, and ask that this jury be instructed not to consider it.

By the COURT.—MOTION DENIED: EXCEPTION ALLOWED. The jury will be instructed not to draw any inference from the answer or the question.

Q. So during the time you spent in the Government employ, at Bremerton, during several years you were close enough to Meyer socially that you had lunch with him nearly every day, in company with other persons, or with yourself, during that period of time; is that true?

A. There is one place we all patronized; yes, sir.

Q. Meyer and yourself, and, sometimes one or two

(Testimony of Milton E. Damm.)

others, would go over to that place for lunch; is that right? A. Yes, sir.

Q. And after Meyer left the employ of the Government, as you expressed it, you thought so highly of Mr. Meyer, personally, that you have taken him, you say, into your employ? A. Yes, sir.

Q. What concern is that now?

A. Priest Rapids Land Owners' Association.

[786—735]

Q. Priest Rapids Land Owners Association?

A. Yes, sir.

Q. Where are you operating?

A. I don't know whether you call it operating or not. My offices are here in Seattle.

Q. Where is your land, or your company's land, located? A. Central Washington.

Q. Is it near Priest Rapids? A. Yes, sir.

Q. What is Mr. Meyer's connection with the company?

A. Mr. Meyers is my secretary and confidential man.

Q. Your secretary? A. Yes, sir.

Q. And what is your position in the company?

A. I am Vice-President. It is not a company, it is an organization, representing the general public.

Q. The Vice-President has a private secretary, is that right? A. Yes, sir.

Q. Has the president a private secretary?

A. No, sir.

Q. Has the secretary of the organization a private secretary? A. He has a stenographer.

(Testimony of Milton E. Damm.)

Q. And Mr. Meyer is your private secretary?

A. Yes, sir.

Q. Isn't it a fact, and don't you know it to be a fact, that Meyer and Kettlewell both have land over in that locality, or are interested in land in that locality? A. Yes, sir, individually.

Q. Individually they have?

A. Yes, sir. [787—736]

Q. Don't you know it to be true, that you and Kettlewell were all—not together in the same transaction—were all interested in getting land over there about this year 1908, isn't that true?

A. I don't remember just exactly whether it was 1908 or not.

Q. But it was along about that time?

A. Yes, sir.

Q. You were all going into land deals over in the Priest Rapids country, isn't that true?

A. Not land deals, just one or two.

Q. Just one or two deals? A. Yes, sir.

Q. But you all were close enough together at that time, that you were considering mutual transactions, or transactions in which you were mutually interested, in 1908 or 1909, isn't that true?

A. Yes, sir.

On redirect examination by Mr. MORRIS the said witness testified as follows:

Q. The transaction to which you refer, was the fact that Mr. Kettlewell bought from A. S. Damm certain land, that was the property of the Priest Rapids Fruit & Land Company? A. Yes, sir.

(Testimony of Milton E. Damm.)

Q. And he gave, in payment for the purchase of that land, that he himself had contracted to buy, this Lyman Evans check for \$1012.77?

A. Yes, sir.

On recross-examination by Mr. ALLEN the said witness testified as follows:

Q. I will ask you to identify this instrument, if you can? [788—737]

A. Those signatures upon it?

Q. Whose signature is the top signature down there? A. My signature.

Q. Whose signature is the next one?

A. My brother.

Q. Whose is the next signature?

A. Mr. Meyer.

(Whereupon said letter and envelope are marked Plaintiff's Exhibit 83 for Identification.)

Mr. ALLEN.—We offer that in evidence.

Mr. MORRIS.—We object to it on the ground it is not proper cross-examination, and second, it is irrelevant and immaterial. Third, if the Government wants to go into it, we will go into it fully and try another issue out in this proceeding, that was tried out in another one, in 2042, and it would be a pleasure for us if we were able to do it before this jury.

By the COURT.—The offer at this time is denied. It may be reoffered sometime during the trial, if you find it necessary.

(Testimony of Milton E. Damm.)

On redirect examination by Mr. MORRIS the said witness testified as follows:

Q. Just one question I want to ask you. Mr. Allen asked you if you had attended or accompanied Mr. Meyer, or Mr. Meyer had accompanied you to lunch, on numerous occasions while you were there at Bremerton. I understood you to answer that you had? A. Yes, sir.

Q. Mr. Meyer was the head clerk over yourself, Mr. Cook and some six or eight or nine other gentlemen? A. Yes, sir. [789—738]

Q. And it was your custom, was it not, for some of you, or many of you, on numerous occasions during the week, to go to lunch together?

A. Yes, sir.

Q. And Mr. Meyer was always in your company?

A. Yes, sir.

Q. He was considered just the same as one of you gentlemen? A. Yes, sir.

**[Testimony of James F. Lane, for Defendants
(Recalled).]**

JAMES F. LANE, recalled, testified as follows on behalf of the defendants.

Direct Examination by Mr. SCHLESINGER.

Q. Mr. Lane, I omitted to ask you whether or not you have with you the original deposit slip, showing the deposit in your bank of the sum of Five Hundred dollars, on April 27, 1908? A. Yes, I have.

Q. The one testified to by Mr. Goldberg.

Mr. SCHLESINGER.—We will offer this in evidence.

(Testimony of James F. Lane.)

Mr. ALLEN.—That is the original, is it?

A. Yes, sir.

(Whereupon said deposit slip was introduced in evidence, and marked Defendants' Exhibit A-100, and read to the jury.)

Mr. SCHLESINGER.—That may be withdrawn. We consent it may be withdrawn and we will have a copy substituted.

By the COURT.—Let the record show it is agreed between counsel [790—739] the original exhibit "A-100" may be withdrawn, and a copy supplied for the record.

[Testimony of Louis R. Hardenberg, for Defendants.]

LOUIS R. HARDENBERG, a witness produced on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. SCHLESINGER.

Q. State your name.

A. Louis R. Hardenberg.

Q. Where do you live? A. City of Seattle.

Q. How long have you lived here?

A. A little over fourteen years.

Q. What is your vocation, occupation or business?

A. I am Vice-President of the Pacific Coast Condensed Milk Company.

Q. Do you know Mr. Emar Goldberg, one of the defendants here? A. I do.

Q. And how long, please, have you known him?

A. Four years, probably longer.

(Testimony of Louis R. Hardenberg.)

Q. Have you known him lately?

A. In a business way, yes, sir.

Q. You have frequently come in personal contact with him, have you? A. Quite often.

Q. Involving transactions covering verbal contracts and written contracts, as well?

A. Yes, sir. [791—740]

Q. And rather extensive contracts, were they, just generally speaking? A. Yes, sir.

Q. Having known him for that length of time, and in that way, do you know his general reputation in this city for the qualities of honesty and integrity?

A. I would say so.

Q. Is that general reputation good, or do you consider it bad? A. Good.

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. You stated in your direct examination that you knew him in a business way. That, may I assume, means that it is confined to your experience with him in business transactions, is that right?

A. Yes, sir.

Q. And your testimony, here given, is based upon your own personal experience with him, is that true?

A. I presume so.

Q. With whom did you ever discuss the question of the probity or integrity of Mr. Goldberg?

A. I can't give any names. I have discussed it with other business men in the city.

Q. But you at this time couldn't give the name of any one person with whom you talked?

(Testimony of Louis R. Hardenberg.)

(No answer.)

Q. You say, at this time, you are unable to give the name of any one with whom you might have talked?

A. Yes, and be absolutely positive, I couldn't say.
[792—741]

Q. You couldn't at this time?

Q. You never discussed with anyone the question of his putting in irregular bids to the United States Navy Department, anything of that sort, you never discussed that with anybody? A. No, sir.

[Testimony of L. G. Morris, for Defendants.]

L. G. MORRIS, produced as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. SCHLESINGER.

Q. State your name. A. L. G. Morris.

Q. What business are you engaged in?

A. In the transfer business.

Q. With what concern are you connected?

A. Georgetown Reliable Transfer.

Q. You have done a large amount of transfer business, have you not, for the Great Western Smelting & Refining Company? A. Yes, sir.

Q. In Seattle? A. Yes, sir.

Q. Do you know Mr. Emar Goldberg, the manager of the branch? A. Yes, sir.

Q. How long, please, have you known him?

A. About nine years.

Q. Mr. Morris, do you know his general reputa-

(Testimony of L. G. Morris.)

tion in the city of Seattle, for the qualities of honesty and integrity? [793—742] A. Yes, sir.

Q. Do you consider that general reputation good or bad? A. Yes, sir.

Q. What is it? A. Good.

Q. I don't want to embarrass you with a personal question, and if you don't care to answer it, I will take no offense. Have you ever had occasion to temporarily borrow any money from Mr. Goldberg?

A. Yes, sir.

Mr. ALLEN.—I move to strike out the answer.

By the COURT.—The answer is stricken. OBJECTION SUSTAINED: EXCEPTION ALLOWED.

Q. I will ask this question, and submit it to the Court's ruling. Don't answer it until counsel may object. Mr. Morris, have you not, on several occasions, borrowed money from Mr. Goldberg, without Mr. Goldberg exacting from you a promissory note, or an I. O. W.? A. Yes, sir.

Q. How much?

A. Oh, different times, different amounts.

Q. What is the largest of those amounts?

By the COURT.—OBJECTION SUSTAINED, AS TO HIS PERSONAL BUSINESS: EXCEPTION ALLOWED.

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. You are in the transfer business?

A. Yes, sir.

Q. How long have you been doing Mr. Goldberg's

(Testimony of L. G. Morris.)

business? A. Seven years, I think, next month.

Q. You get quite a bit of business out of the Great Western Smelting [794—743] & Refining Company, don't you? A. Quite a bit; yes, sir.

Q. And you knew him about as intimately, probably, as you do the owners of other businesses, for which you deliver? A. Yes, sir.

Q. And no more so, possibly. Did you ever discuss with any other person the question of the integrity and honesty of this man, Goldberg?

A. No, sir. I speak of Mr. Goldberg just as I know him in everyday life.

Q. That is all, just exactly as your experience with him, that is all? A. Yes, sir.

Q. Confined to your own personal contact with him, in matters that came up? A. Yes, sir.

[Testimony of Frank L. Baker, for Defendants.]

FRANK L. BAKER, a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. SCHLESINGER.

Q. State your name. A. Frank L. Baker.

Q. Where do you live? A. Live in Seattle.

Q. How long have you lived in the city of Seattle?

A. Between fifteen and twenty years.

Q. What is your business? [795—744]

A. Foundryman.

Q. What is the name of your foundry?

A. Enterprise Brass Foundry.

Q. Have you a partner in that concern?

A. Two of them. It is a corporation.

(Testimony of Frank L. Baker.)

Q. Do you know Mr. Goldberg? A. I do.

Q. How long, please, have you known him?

A. About ten or eleven years.

Q. Do you know the general reputation of Mr. Goldberg for the qualities of honesty and integrity?

A. I think I do.

Q. Is that general reputation—

Mr. ALLEN.—I object to the answer, on the statement of the witness.

By the COURT.—The answer must be yes or no.

A. Yes, sir.

Q. Is that general reputation good or is it bad?

Mr. ALLEN.—I object to it until he has qualified himself.

Q. Is that general reputation for those qualities good or is it bad?

A. Very good, as far as I know of.

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. So far as you know, did you say?

A. Yes, sir.

Q. You didn't state any year or time when you knew his reputation to be good. With whom did you ever talk in regard to the reputation [796—745] of Mr. Goldberg, the defendant, as to his integrity, probity, or anything of that sort?

A. I have talked with Mr. Clark. I think he is vice-president of one of the banks, I don't know just which one it is.

Q. You don't know which one it is?

A. No, sir.

(Testimony of Frank L. Baker.)

Q. You don't know when that conversation took place, do you?

A. I think it was about two years ago, I don't know.

Q. About two years ago. Your impression is based then upon a conversation with some man, who is connected with some bank? A. No, sir.

Q. And upon your personal experience with him, is that right?

A. My experience, through my business, has been one of the ways.

Q. It has been one—

A. Which is based on dealings.

Q. Dealings with your concern and personally with Mr. Goldberg? A. Yes, sir.

Q. In other words, he has never put in any duplicitous contract, in any matter in which you are concerned?

Mr. SCHLESINGER.—I object to that as not being proper cross-examination, and again charge willful misconduct on the part of the United States Attorney.

By the COURT.—I think you can get it in other ways.

Q. You have never talked with any official of the United States Navy Department with reference to his conduct or attitude, in the matter of bids, have you? A. No, sir.

Mr. SCHLESINGER.—I object to that as not being proper cross-examination.

By the COURT.—OBJECTION OVERRULED:

(Testimony of Frank L. Baker.)

EXCEPTION ALLOWED. [797—746]

Mr. ALLEN.—He has already answered, he has not.

Q. Where is this foundry located?

A. 92 Virginia street.

Q. Three partners there? A. Three of us.

Q. Who is with you?

A. Mr. Eugene Thurlow, Mr. James B. Carmickle.

Q. Did you ever hear Corder say that Goldberg's reputation was good?

A. I don't know. I never spoke to Mr. Corder.

Q. You never did? A. No, sir.

On redirect examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Will you tell me the name of your third cousin, living in Iowa?

By the COURT.—PROCEED.

Mr. SCHLESINGER.—Your Honor understands that all the testimony that will follow, applies to the defendant Goldberg, as well as the defendant Corder, that is testimony coming from any one of the counsel.

**[Testimony of Emar Goldberg, for Defendants
(|Recalled—Cross-examination).]**

EMAR GOLDBERG recalled.

Cross-examination by Mr. ALLEN.

Q. Mr. Goldberg, you stated yesterday in your direct examination [798—747] that Mr. Alper, along in April, April 19, 1908, handed you—gave you this, the beginning of this bonus account was inscribed in your books. Is that right as regarding the date?

A. No, sir.

(Testimony of Emar Goldberg.)

Q. What is the proper date?

A. The proper date is the date when Mr. Alper was here in Seattle.

Q. What is that date?

A. I don't exactly know that date.

Q. You can, by reference to the bonus account itself—

A. The bonus account would not show.

Mr. SCHLESINGER.—Here is the complete bonus account.

Q. This shows a credit of \$5,000 in your ledger on April something, 1908. I don't know—you tell the jury what it is, I don't know.

A. This is not the original sheet.

Q. The original sheet, I think, is in evidence. We will get you the original.

A. It looks like April 23d.

Q. We will look at the original in just a minute. Here is the original. Your judgment confirms mine. That apparently says April 23, 1908.

A. Yes, sir.

Q. That, then, was the date that there was deposited to your credit the sum of \$5,000, or deposited to the credit of the bonus account, Emar Goldberg bonus account?

A. Yes, sir.

Q. In what form did you receive this \$5,000?

A. I didn't receive the \$5,000.

Q. Well—

Mr. SCHLESINGER.—I don't think you quite understand it. It was [799—748] a drawing account.

Q. That is credited to the bonus account?

A. Yes.

Q. It must, as a matter of bookkeeping, have been

(Testimony of Emar Goldberg.)

taken from either your cash account or some other account on your books, or it must have been an actual remittance there somewhere. Where did that \$5,000 come from?

A. I never received \$5,000. There was an agreement that I was to get this money during a period of five years. I considered at that time first how to make the entry so I talked it over with the bookkeeper and decided to credit my bonus account with \$5,000, but as the firm had not spent the \$5,000, at the first time they took inventory, you will notice here that the amount of the money drawn on that bonus account up to the time the inventory was taken, is charged and the balance taken off the books, because the firm could not very well take as a liability, something that it hadn't as yet paid, and might not, because, if I left the firm at any time they would not be obligated to pay me any more than \$5,000.

Q. As a matter of bookkeeping, when you start a new account and give it credit for the sum of \$5,000, you must charge some other account somewhere in the equivalent sum, in order to make the books balance, isn't that right? A. That is true.

Q. Where was this charge entered on the other side of the ledger?

A. Might have been entered to expense; might have been entered to profit and loss; might have been entered to commission account; might have been entered to half a dozen—

Q. Tell me, if your memory will permit you to do

(Testimony of Emar Goldberg.)

so, against what account it was charged, as a matter of fact?

A. I don't recall. I say it might have been entered to any one of [800—749] half a dozen different accounts. It was a credit to me and apparently it was as a journal entry—

Q. What does that word "bonus" mean, Mr. Goldberg?

A. What do you mean, according to Webster's dictionary?

Q. According to the common acceptance in business affairs?

Q. What is the meaning of the word "bonus"?

A. Bonus is, in this particular sense, as put down here, was intended in place of commissions that I had formerly been getting. Up to the first of April, 1908, I had been getting commissions.

Q. I understood you the other day to state that this \$5,000 was given to you so that you could expend it at any time during a period of five years, is that right? A. That is true.

Q. Did you have any five-year written contract with your company?

Mr. SCHLESINGER.—I object to that as incompetent and immaterial, not proper cross-examination. What difference does that make?

By the COURT.—PROCEED. OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. I have been with the firm fifteen years and never had a written contract.

Q. Yet they placed to your credit, upon the books

(Testimony of Emar Goldberg.)

of their corporation, the sum of \$5,000, which you could withdraw in one day or two days or within five years, is that right?

A. That is true. That simply shows the confidence they had in me.

Q. That shows the confidence they had in you?

A. Yes, sir.

Q. Now, as a matter of fact, down to June 1, 1908, having been placed to your credit April 23, 1908, down to June 1st, following, including those two items \$502 and \$210, tell the jury—figure it out and tell the jury just how much of this \$5,000 disappeared from [801—750] this bonus account?

A. None of it disappeared.

Mr. SCHLESINGER.—I object to that upon the ground that the bonus account speaks for itself.

Q. I want him to explain.

Mr. SCHLESINGER.—I object to it. It speaks for itself. The items explain themselves.

By the COURT.—I think he may answer. **OBJECTION OVERRULED: EXCEPTION ALLOWED.**

A. You want down to June 1st or including June 1st?

Q. June 1st, 1908. A. Including June 1st?

Q. Including June 1st.

A. That is \$1936 up to June 1st.

Q. Then in a period covering seven days, in the month of April, and thirty-one days in the month of May and one day in the month of June, covering that short period of time, nearly \$2,000 of your \$5,000

(Testimony of Emar Goldberg.)

had been drawn from that account?

A. Yes, and I spent a great deal more money than that in the same time, and it went to the same place.

Mr. SCHLESINGER.—There is a typewritten statement, if you care to use it, showing the items received by the Great Western Smelting & Refining Company on the bonus account, and if you can find the relationship, I will buy you a nice hat.

Q. You testified the other day, or rather your counsel stated and you admitted and corroborated it in a way, that the sales of the Great Western Smelting & Refining Company to the United States Government for a year prior to the first of April, 1908, were no more than \$5,000, is that right?

Mr. SCHLESINGER.—I object to that as having been inquired into [802—751] on cross-examination.

Mr. ALLEN.—No, sir, I beg your pardon.

Mr. SCHLESINGER.—Then you should have inquired into it on cross-examination, going over the same ground over and over again.

Mr. ALLEN.—It never was referred to, your Honor.

By the COURT.—I don't assume that this will be extended. Let him answer. OBJECTION OVER-
RULED: EXCEPTION ALLOWED.

A. No, sir, I didn't testify to that fact.

Q. What was the fact then?

A. I testified that our sales through the Navy Pay Office, for that year were about \$5,000.

Q. Do or do not your books show—I will have a

(Testimony of Emar Goldberg.)

sheet here to refresh your recollection—that there was sold, during that period of time, on the books of your company to the United States Navy Yard officials, about \$20,000 worth of material?

A. No, sir. they don't show that there was sold \$20,000 to the Navy Pay Office.

Q. I am not talking about the Navy Pay Office. I am talking about the navy yard in Bremerton, or to the Navy Pay Office.

Q. Complete your answer with the fact or circumstances of that.

A. When I testified yesterday, I testified in reference to the business through the Navy Pay Office. I am well aware of the fact we had done considerable business through the Department at Washington, but no questions were asked to me regarding the business that was done through the office at Washington.

Q. I call your attention to this. Do you identify that as a memorandum from your ledger?

A. Yes, sir.

Mr. ALLEN.—I ask that to be identified.

(Whereupon said memorandum was marked for identification as Government's Exhibit 84.) [803—752]

Mr. ALLEN.—We offer this in evidence.

Mr. SCHLESINGER.—We object to it as being absolutely incompetent, irrelevant and immaterial, and has nothing to do with any of the issues involved in this case, and not proper cross-examination.

(Further argument by counsel.)

By the COURT.—Let it be admitted. OBJEC-

(Testimony of Emar Goldberg.)

TION OVERRULED: EXCEPTION ALLOWED.

Mr. ALLEN.—That statement shows \$20,000 and some odd dollars.

Q. If this—

(Whereupon said statement marked Government's Exhibit 84 for identification was admitted in evidence.)

Q. If this statement shows \$20,613.99, you would say that is right, would you?

A. Very little of that business is through the Navy Pay Office.

Q. That material was all delivered out of your warehouse, or out of your office down here or out of your building and went over to the navy yard here at Bremerton, didn't it? A. Not necessarily.

Q. As a matter of fact, didn't it?

A. Not necessarily. It might have come direct through from the Great Western Smelting & Refining Company, but not necessarily from our warehouse.

Mr. ALLEN.—Without boring you with items, the aggregate amount down to March 21st—

By the COURT.—If you want to read it to the jury, read the whole business.

Mr. SCHLESINGER.—Let them look at it.

Mr. ALLEN.—The aggregate amount is \$20,000.

Q. Then your suggestion made the other day, Mr. Goldberg, was that through Mr. Kettlewell's office, during the period prior to [804—753] April 1st, 1908, you had done simply \$5,000 worth of business?

A. Approximately. I figure out roughly—

(Testimony of Emar Goldberg.)

Mr. SCHLESINGER.—Per year?

Mr. ALLEN.—In that year. Then beginning April 1st, 1908, in the month of April, May and June, you show sales through that office of \$7,417, do you not? A. That is true.

[Testimony of Edwin F. Meyer, for Defendants.]

EDWIN F. MEYER, a witness produced on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. SHIPLEY.

Q. State your name. A. Edwin F. Meyer.

Q. You are one of the defendants in this case?

A. I am.

Q. You are the same Edwin F. Meyer who was jointly indicted with Mr. Kettlewell, one of the Government witnesses, in case 2042 in this court?

A. Yes, sir.

Q. Where do you reside?

A. At 107 21st Avenue North, in this city.

Q. How long have you lived in the State of Washington? A. Since 1902, August.

Q. Where were you born?

A. In South Carolina.

Q. What year? [805—754] A. '77.

Q. How long did you reside in the State of South Carolina?

A. Off and on until in 1902, when I came out here.

Q. During your residence in South Carolina, in what were you engaged?

A. I was connected with the Naval Department

(Testimony of Edwin F. Meyer.)

nearly all of the time after I became of age.

Q. At what point? A. Fort Royal.

Q. At what age did you enter the United States Naval Service, in connection with the Fort Royal Navy Yard? A. About 19, I think.

Q. At the age of 19 years? A. Yes, sir.

Q. Describe to the jury the character of the Navy Yard, and what department therein you were engaged in?

A. I was connected with the Storekeeper's Department and the Paymaster's Department. Fort Royal is a small establishment and the Paymaster who was at the yard was Pay Officer, that is he paid the employees working in the yard, as well as Storekeeper and Purchasing Pay Officer there.

Q. In other words—

A. He occupied the three duties.

Q. That department combined, to a certain extent, the duties of the Pay Office, together with that of General Storekeeper? A. Yes, sir.

Q. And your duties in that department were what?

A. I assisted the Paymaster in paying off the employees, in preparing proposals for the purchase of supplies and in placing the awards; also assisted in the matter of bookkeeping. [806—755]

Q. During what length of time did you perform those duties? A. From 1896 until 1902.

Q. During your service in that capacity, were you ever the subject of censure or complaint for failure to faithfully perform the work that you were en-

(Testimony of Edwin F. Meyer.)

gaged in? A. No, sir.

Q. Describe to the jury how you came to come out here to the coast.

A. Why, I think I made an application—I am sure I made an application for transfer here, and the Navy Department, at the request of Paymaster Morris, who was in charge of the office here, gave me a promotion and a transfer.

Q. Who is Paymaster Morris, in what department?

A. He was Storekeeper and Paymaster of the yard. At that time the Pay Officer here—

Mr. ALLEN.—What yard now are you talking about?

A. Puget Sound. At that time the yard was very small and the Paymaster performed both duties, the Paymaster of the yard and General Storekeeper.

Q. What is in the Puget Sound Navy Yard?

A. Yes, sir, he is Paymaster of the yard as distinguished from the Storekeeper, in that he pays the yard employees and the officials.

Q. And was that transfer in the nature of a promotion, or otherwise? A. Promotion, sir.

Q. What duties were you assigned, upon your being attached to the Puget Sound Navy Yard?

A. I think, when I first came, I was given a little temporary work in the bookkeeping section, and there, shortly thereafter, I was made public bill clerk, that is the preparation of the documents [807—756] that would result in the merchants

(Testimony of Edwin F. Meyer.)

being paid their bills for delivery of material at the yard.

Q. When you first became attached to that department, describe to the jury what the size of the department was, and the number of clerks employed and the general condition of affairs that existed at that time?

A. Prior to the year 1902, the yard was comparatively insignificant, and there were very few employees in the Storekeeper's Department. The force was increased in 1902 by, I think, three or four men. I happened to be one of them. At that time, that particular time, there were two vessels at the yard, one, I think the Wisconsin and another vessel, the Oregon, which increased the work there very materially. After their repairs, and departure, the work again decreased. The yard was comparatively small.

Q. At what period is that of which you are speaking? A. 1902.

Q. That is the year of 1902? A. 1902.

Q. At that time, then, with that increase, how many men did it make in the Storekeeper's Office?

A. There were, clerical force, I think, five or six, maybe, not more, exclusive of the Pay Clerk.

Q. Who was the chief of that department at that time? A. J. A. Kettlewell.

Q. I mean the head, the Paymaster himself?

A. When I first came, Paymaster Charles L. Morris, I think, is his name. Charles Morris, I know.

Q. And next to him was whom?

(Testimony of Edwin F. Meyer.)

A. Kettlewell, J. A. Kettlewell.

Q. That is the Kettlewell who was a witness for the Government in [808—757] this case?

A. He was the chief clerk.

Q. What were his duties at that time?

A. The duties devolving upon the chief clerk generally were the regulation of the force, small at that time, and correspondence in connection with what little work there was in the Storekeeper's Department.

Q. What was your position, in relation to his?

A. Well, I was public bill clerk under him. I acted also under another—

Q. He was your superior? A. Yes, sir.

Q. Now, was it during that period that you said that the Paymaster, who had charge of the Storekeeper, was also dispensing officer, for making payment of salaries to employees in the yard?

A. Yes, sir.

Q. What was the approximate amount of disbursements per month, during that period, through that office?

A. Well, it varied quite a bit; sometimes it was as high as Forty or Fifty Thousand Dollars a pay day—that is semi-monthly—Eighty or One Hundred Thousand Dollars a month, at periods.

Q. Did you have any connection with the making or paying of these disbursements at that time?

A. No, we had a pay clerk, who was in charge of that particular work. I counted the money, put it in envelopes and made the payments to the men.

(Testimony of Edwin F. Meyer.)

Q. That continued during what period of time, about how long?

A. I think up to about 1904. I am not positive about that.

Q. Were there ever any complaints made of the lack of faithful performance of your duties, connected with the disbursement of that [809—758] money? A. No, sir.

Q. Were the accounts of that department, these cash transactions, I mean, and disbursements, audited? A. Very frequently.

Q. How frequently?

A. Well, there would be returns sent to Washington monthly and quarterly and there would be an inspector out every quarter, I think, or six months, not longer than once in six months, for personal examination.

Q. Were there ever any shortages?

A. I know of none, sir; no, sir.

Q. Never any complaints made of any?

A. No, sir.

Q. You were never called upon to make any explanation of any? A. No, sir.

Q. When you came to the Puget Sound Navy Yard, were you a married man or single?

A. Single.

Q. Are you a married man now? A. Yes, sir.

Q. When were you married? A. 1903.

Q. Where? A. In the city here.

Q. Where did you live the first year after your marriage? A. Bremerton.

(Testimony of Edwin F. Meyer.)

Q. Then, for how long following your marriage, did you continue to reside in Bremerton, with your wife?

A. I think it was the fall of 1904. I lived over there about a year [810—759] and a half, maybe November, 1904, I think.

Q. That is you lived there until that time?

A. I lived there, yes, until that time.

Q. Did you buy a home in Bremerton?

A. Yes, sir.

Q. Did you, after the fall of 1904, remove from Bremerton? A. To Seattle, yes, sir.

Q. Where to? A. Why—

Q. Where did you take up your residence?

A. I don't recall, sir. My wife went East to visit her folks. I roomed somewhere, two or three different places, I don't recall just where. At Cedar Street, once, I think, and I had a room down town for awhile, a place on Third Avenue and James, I had a room there for awhile.

Q. Now, you took up your residence then here in Seattle, about when, the first time?

A. About November, 1904, I think it was, sir, in the fall, late in the year, because I remember she went East about November, and I came over here.

Q. When did she return?

A. She returned about 1905, sometime.

Q. And did you take up your residence in the city, or over at Bremerton?

A. Over here. We roomed here until 1906.

Q. Until 1906? A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. And where did you live from that time on?

A. I bought a place over here, in 1906.

Q. Whereabouts? [811—760]

A. The place I am now living, 107 Twenty-first Avenue North.

Q. And you occupied that at some what date?

A. It was sometime in September, may have been—I think August or September.

Q. Of what year? A. 1906.

Q. And you continued to live on Twenty-first Avenue from August, 1906, up to what time?

A. In the latter part of September, 1907.

Q. Just describe to the jury what you did at that time.

A. Well, my wife was not feeling very well about that time, and about to be confined. I decided that it required too much time to make the trip to and from Bremerton, that is, I would have to leave home in the morning about 6:30. I was working long hours and I wouldn't return until about seven o'clock. That would take me away from home too much. I decided, in view of her health, to remove her over to Bremerton, where I could be with her most of the time, and along the latter part of September, or the first of October, we occupied Mr. Cook's house at Bremerton.

Q. You mean by Mr. Cook, the gentleman who was on the witness-stand, in this case, the other day?

A. Yes, sir. In that way I could remain at home until about eight o'clock, or half-past eight, and return about five, quite a few hours more.

(Testimony of Edwin F. Meyer.)

Q. Now, before removing from your residence on Twenty-first Avenue, in Seattle, to Bremerton, what arrangement and with whom did you make an arrangement, if any, for the renting of your Seattle place?

A. Why, a neighbor was about to be married, Mr. Walls, who was a witness here, and he made arrangements to occupy my place, beginning [812—761] October 1st.

Q. Of what year? A. Of 1907.

Q. What was done pursuant to that arrangement?

A. Mr. Wells, he occupied it for a year or two years, I think, about.

Q. Commencing when? A. October 1, 1907.

Q. And how long, or when, with reference to October 1st, 1907, did you move over to Bremerton?

A. Well, it was about that time. I vacated the house sometime before October 1st, and took my family right over to Bremerton.

Q. And you moved into the house that you had rented from Mr. Cook, then, did you?

A. Yes, sir.

Q. And, commencing with October 1st, you continued to occupy Mr. Cook's home at Bremerton, for what period of time?

A. Until the latter part of March.

Q. Until the latter part of March? A. Yes.

Q. What year? A. 1908.

Q. During the period from October 1, 1907, to the latter part of March, 1908, were you in the habit of coming over to Seattle, on the late boat, about

(Testimony of Edwin F. Meyer.)

seven in the afternoon, getting your dinner in town, and spending an hour or so thereafter in the office with Mr. Kettlewell, during the months of October, November, December and January? A. No, sir.

Mr. ALLEN.—I object to that as being leading. I wish counsel [813—762] would direct his question in such a way as to ask him what his habits were, without calling his attention to specific hours.

By the COURT.—I think the question is leading.

Mr. MORRIS.—This is a direct contradiction of the statement of Mr. Kettlewell.

By the COURT.—I appreciate that. I think some foundation should be laid, before simply asking the direct question of the witness. Advise the jury of his habits.

Q. Did you hear the testimony of the Government's witness, Kettlewell, that during the months of October, November and December, that you were in the habit of coming to Seattle on the late boat, going to your dinner, and after the dinner hour, meeting him in his office, and spending an hour or so with him? A. I did, sir.

Q. On frequent occasions? A. I did, sir.

Q. State to the jury whether that testimony, or statement, is true, or false.

A. It is absolutely false.

Q. State to the jury, if you can, what the conditions were in your family, and what your actions, were, covering this same period.

Mr. ALLEN.—What period?

Q. October, November, and December, 1907.

(Testimony of Edwin F. Meyer.)

A. During the time we were over at Bremerton, I went over there, as I stated before, for the purpose of being with her most of the time, on account of her illness, and I remained at Bremerton, with very few exceptions, during all the period that we lived over there. There were exceptions, of course, when I would come to Seattle. There was only one late boat. That is, on [814—763] Saturday night there was a boat leaving here at 11:30, but aside from that, there was no boats leaving at all, after half-past four in the evening.

Q. Leaving where?

A. Leaving Seattle for Bremerton, until after half-past four, I think, was the last boat at that time, therefore, for me to be in the city in the evening, I would have to remain all night.

Q. If you had come over on the late boat from Bremerton, to Seattle, then you would have had to remain—

A. Remain in the city all night; yes, sir.

Q. All night, excepting on Saturday night?

A. Saturday evenings.

Q. Did you, during that time, come to Seattle on the afternoon boat, and remain in the city over night, returning to Bremerton the following morning or day?

A. During the entire period, I may have, a few times. I don't—

Mr. ALLEN.—What period is it now you are referring to?

A. We are referring to the period now I lived

(Testimony of Edwin F. Meyer.)

there at Bremerton.

Q. This is confined to October, November, and December? A. From October to March.

Q. The question is October, November and December, I am now interrogating you on?

A. Well, I might extend even until March, but during October, November and December—

Q. The question I am asking you now is whether, during the months of October, November and December, you did, as a fact, come to the city on the afternoon boat, remain in the city all night, returning to Bremerton the following morning?

A. No, sir.

Q. Now, you said that the reason for your remaining at home, was [815—764] the condition of your wife, and expected illness. State to the jury whether there was a child born in the family, at that time. A. There was.

Q. When? A. December 29th.

Q. Who was living neighbor to you and your wife during that period?

A. There were two families, one on either side, a Mrs. Green on one side, and another family that is now in the east somewhere, Robinson.

Q. Was Mrs. Flora Green, who was a witness in this case, one of those neighbors? A. Yes, sir.

Q. During that period?

A. She was there next door.

EDMOND F. MEYER, direct examination (continued) by Mr. *SHIPLEY*.

Q. Mr. Meyer, I believe I asked you in regard to

(Testimony of Edwin F. Meyer.)

your duties in the general storekeeper's office, during the years 1902 and 1903, or about that period. Just state to the jury, in a general way, commencing at that time, the character of the duties that you performed? A. About what time?

Q. Commencing with 1902 and 1903, where we left off. [816—765]

A. In 1902 the storekeeper's office was combined with the paymaster's office, and I performed duties under the two various offices. That is, I assisted in the paying of the yard employees, and also with the general storekeeper's work, such as the making of public bills and bookkeeping, little account of bookkeeping,

Q. This was up to what time?

A. Up until about 1904, I think, or 1905.

Q. Now, from that time on, state what you were, what the duties of your employment were?

A. After the officer were separated, that is, after the storekeeper was ordered to the yard, I became attached to the storekeeper's office, and performed various duties in connection with the storekeeper. I had, I was given charge, I think, of the general outside work, to see that the stores were delivered properly to the various storehouses in the navy yard, and that they were properly cared for.

Q. And these duties brought you in contact with what departments or portions of the Navy Yard?

A. All of the departments, offices and workmen in the navy yard.

Q. Who was Paymaster in charge of your depart-

(Testimony of Edwin F. Meyer.)

ment at that time, in 1904?

A. In 1904 Paymaster D. M. Addison was in charge.

Q. And at that time who was over you as chief clerk in the office? A. Mr. Kettlewell.

Q. And your duties, in charge of this general outside work, continued for how long?

A. Up until the latter part of 1906. Meanwhile Paymaster Addison was relieved by another pay officer, who was in turn relieved [817—766] by Paymaster Brooks, and Paymaster Brooks was in charge of the office when Mr. Kettlewell was transferred to the purchasing pay office in the city here.

Q. What date?

A. I believe it was about December 1, 1906; I think that is the correct date.

Q. And Paymaster Brooks, you say, was in charge at that time, of the office of general storekeeper?

A. Of the office at that time, yes, sir.

Q. And when Mr. Kettlewell was transferred from the Navy Yard at Bremerton to the Paymaster's office of the Navy Pay Office in Seattle, what change was made in your duties, if any?

A. I was promoted to principal clerkship of the office, after Mr. Kettlewell's transfer, and assumed the duties of chief clerk, in addition to the other duties.

Q. Now, this was in December, 1906?

A. December 1, I think he was transferred, in 1906.

Q. And from that time on, explain to the jury what your duties consisted of?

(Testimony of Edwin F. Meyer.)

A. Well, prior to Mr. Kettlewell's departure, I had charge of the clothing and small stores of the navy yard, and the provisions—that is, the storekeeper is charged with keeping on hand a certain amount of clothing and small stores for issue to the vessels and sailors in the Navy Yard, and he also is charged with keeping on hand a small quantity—it was at that time a small quantity of provisions, for the few ships that we had in this vicinity.

Q. What do you mean by the expression “had charge of keeping on hand,” just explain that to the jury.

A. Well, the storekeeper—I think in what the name implies, one who is charged with the keeping and accounting of stores. There [818—767] are five or six different departments in the navy yard, were at that time. There was a Department of Construction and Repair, at the head of which was a Naval Constructor. Department of Engineering, at the head of which was an engineer, and there was the Ordinance Department, Equipment Department and the Yards & Docks Department, at the head of which was a civil engineer.

Mr. ALLEN.—Yards and what?

A. Yards & Docks. These various departments require material in the operation of their work, in the performing of their work, and the storekeeper was a sort of a pivot. At that time these various yard departments would make requisitions in their respective offices, and it would be necessary for that requisition to bear the signature of the storekeeper.

(Testimony of Edwin F. Meyer.)

Those requisitions were forwarded to the storekeeper, who signed them, and forwarded them to the various heads of departments in Washington, who, after approving a purchase of material, would come to the storekeeper again, to be delivered to these various heads of departments, and, as storekeeper, he had under his personal supervision, sort of a personal responsibility, the clothing and small stores, which would be sent to these ships, and the provisions. We didn't keep a very large stock of provisions, because there were no facilities for storing them at the yard. But at that time I had the personal supervision of the clothing and small stores and the provisions; when Mr. Kettlewell was transferred, I took over the work he had been performing, the chief clerkship.

Q. Now, up to that time, in performing your duties, in general oversight of these supplies, that you have mentioned, did you, or did you not, have anything to do with the matter of proper requisitions for the purchase of those supplies? [819—768]

A. Only in a very limited way.

Q. Prior to 1906?

A. The only material that we had anything to do with in that respect, was what was known as naval supply fund stock, and the aggregate amount of stores carried on hand at that time, was simply \$100,000 and we kept that stock up by requisitions, at intervals of about from three to six months, I guess three months, probably, on Washington. In a very limited way, yes.

(Testimony of Edwin F. Meyer.)

Q. That was just to keep up the stock?

A. Yes, the requisitions, yes. Certain articles were agreed upon and carried. For instance, white lead and paint and oils, and a few items of iron and steel, we would endeavor to maintain a small stock of that. The aggregate would not amount to more than \$100,000, it should not have. That was the instruction.

Q. Now, then, as I understand it, up to December 1st, your duties did not call you into as close, intimate connection with the routine in the office, which had to do with the preparation of requisitions, as it did at a subsequent date?

A. General requisitions at that time were prepared in the offices of the respective Yard Departments, under their supervision; simply forwarded to our office for registering and numbering, counting.

Q. In other words, you were sort of a clearing house? A. Purely, yes, sir.

Q. Now, that was the condition that existed up, say, to the first of December, 1906? A. Yes, sir.

Q. From that time on, explain to the jury if there were any changes, and what.

A. Well, the Navy Department rather decided to not limit in [820—769] that way the naval supply fund stock. By that I mean that at the end of the fiscal year, all the material which had been purchased during that year, the previous year, for the various other departments, were grouped into what we call a supply fund, and on July 1st, all that was turned into that naval supply fund, and in that way, we had

(Testimony of Edwin F. Meyer.)

an accumulation of naval supply fund stores from these various departments.

Mr. ALLEN.—July 1, 1907, was this?

A. I don't remember whether it was 1907 or 1906, but it was about that time, but the Yard Departments continued to prepare these open purchase requisitions whenever they wanted supplies, except for certain articles that we tried to keep up.

Q. Now, you say that each of these five departments initiated, prepared and filed with the general storekeeper, the requisitions for their particular needs?

A. Each and every one of them, yes, sir.

Q. That is up to 1906?

Mr. ALLEN.—You understood that question included the element, up to 1906, did you?

A. Yes, sir, and they continued thereafter for some time.

[Testimony of Ralph S. Stacy, for Defendants.]

RALPH S. STACY, produced as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. KERR.

Q. State your full name to the jury, will you please? A. Ralph S. Stacy.

Q. Where do you reside?

A. I live in Tacoma. [821—770]

Q. What is your occupation? A. Banker.

Q. With what banking institution are you connected, and in what manner?

A. National Bank of Tacoma.

Q. What position do you occupy?

(Testimony of Ralph S. Stacy.)

A. President.

Q. You were formerly connected with the National Bank of Commerce in this city? A. Yes, sir.

Q. Also the Bank of California?

A. Yes, sir, with the London, San Francisco.

Q. How long were you connected with the National Bank of Commerce in the city of Seattle?

A. I was with the Washington National and the Commerce for six years.

Q. You were with the Washington National before the consolidation? A. Yes, sir.

Q. Then with the consolidated bank afterwards?

A. Yes, sir.

Q. You are acquainted with Emar Goldberg, one of the defendants in this case? A. Yes, sir.

Q. How long were you acquainted with Mr. Goldberg?

A. As I recollect, between eight and nine years.

Q. Were you acquainted with the Great Western Smelting & Refining Company? A. Yes, sir.

Q. Did that company do business with your bank? [822—771] A. They did.

Q. Mr. Goldberg also? A. Yes, sir.

Q. Were you acquainted, during the years that you knew Mr. Goldberg, with his standing in this community, and his reputation for truth, probity and uprightness of dealing? A. I was.

Q. Will you state to this jury, if you please, whether it was good or bad. A. It was good.

(Testimony of Ralph S. Stacy.)

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. You have not stated on what you base your judgment, as regards Mr. Goldberg. I presume your acquaintance with Mr. Goldberg was that of contact with him as a customer in the bank, is that true?

A. Right.

Q. And such testimony as you have given here, is based upon that acquaintance with him, is that right?

A. Practically so, yes, although I know him somewhat in other ways.

Q. You are testifying, then, that, from your experience, based upon that relation of banker and client, or banker and customer, that was fairly your experience with him; that he was entitled to the beautiful encomium just given him by Mr. Kerr, is that right? A. Yes, sir.

Q. You had how many customers in the National Bank of Commerce, when you left here? [823—772]

A. I don't know; quite a number.

Q. About how many depositors?

A. I couldn't say; several thousand.

Q. And you could make substantially the same observation as regards any one of those several thousand customers, who did the same amount and quantity of business through your institution, as you have just made about Mr. Goldberg, isn't that true?

A. That is hardly true, because the customers with whom I met, were those who borrowed a much smaller proportion.

Q. The customers with whom you came personally

(Testimony of Ralph S. Stacy.)

in contact, generally were those who borrowed money from the institution? A. Yes, sir.

Q. The same observation, practically, could be made of any customer who borrowed money from you, in that time, who did treat your bank fairly and properly? A. Surely.

Q. You don't know anything about his relations towards or with the United States Government, or any of its purchasers over at the navy yard, do you?

A. I don't.

Q. You are confining it simply to your experience with Mr. Goldberg's—experience with him personally and his experience with the National Bank of Commerce, isn't that right? A. Yes, sir.

On redirect examination by Mr. KERR the said witness testified as follows:

Q. I will ask you this further question, in connection with the [824—773] conduct of the bank and business, does it become necessary, in the conduct of that business, for you to familiarize yourself with the general standing of your depositors, men who are borrowing money from you continually, in reference to the probity and uprightness of their dealing?

A. Particularly with the borrowers; yes, sir.

[Testimony of Robert M. Walker, for Defendants.]

ROBERT M. WALKER, produced as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Cross-examination by Mr. KERR.

Q. State your name. A. Robert M. Walker.

Q. You reside in the city of Seattle?

(Testimony of Robert M. Walker.)

A. Yes, sir.

Q. What is your business?

A. I am assistant cashier of the National Bank of Commerce.

Q. How long have you been connected with the National Bank of Commerce?

A. Since 1906, since the time of the consolidation. Previous to that, with the Washington National Bank.

Q. You were with the Washington before they consolidated? A. Yes, sir.

Q. Are you acquainted with the defendant, E. Goldberg? A. Yes, sir.

Q. Has he done business with the National Bank of Commerce, or Washington National Bank, during the time you were connected with that bank? [825—774] A. Yes, sir, he has.

Q. What was the extent of the business, was it constant business? A. I beg your pardon.

Q. What was the extent of his business; was he constantly engaged in business with you?

A. Yes, sir, constantly.

Q. Do you know what the reputation of Mr. Goldberg was, or what reputation he bore during the years you were connected with that bank, in the city of Seattle, for truth, and for probity, honesty and uprightness of dealing?

A. So far as I know, it was good.

Q. Do you know, yes or no, do you know what his reputation was?

By the COURT.—Answer yes or no.

(Testimony of Robert M. Walker.)

Q. Just answer yes or no. A. Yes.

Q. Now, will you state to the jury what it was, good or bad? A. It was good.

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. You heard the questions propounded by me to Mr. Stacy, who just left the stand, did you not?

A. Yes, sir.

Q. Your observation as regards Mr. Goldberg, is based upon and confined, I assume, to your relations with him as a bank official, during the time he has done business there, is that right? A. Yes, sir.

Q. Your observations regarding Mr. Goldberg have not been [826—775] any more extensive, possibly, than that in the case of any other man, among your thousands of lists of customers, who have done business with the bank, and borrowed money with the bank, and have done the same like quantity of business through the institution, is that true?

A. Yes, sir, that is true.

Q. So that you could say that—make the same answer to Mr. Kerr's questions as regards hundreds of men, who have done and are doing business with your institution now, isn't that true?

A. Yes, sir, that is true. Of course, more so in regard to the borrowers.

Q. I included that as an element? A. Yes, sir.

Q. The ordinary customer of the bank, who doesn't borrow money, ordinarily doesn't come in contact with you, unless you happen to know him, or something of that sort? A. Yes, sir.

(Testimony of Robert M. Walker.)

On redirect examination by Mr. KERR the said witness testified as follows:

Q. In connection with the conduct of the banking business of the National Bank of Commerce, and with the performance of your duties as assistant cashier with the bank, I will ask you to state to the jury whether it became any part of your duty to know, generally, the standing and reputation of Mr. Goldberg, among other like customers in this community, for truth, probity and uprightness of dealing? A. Yes, sir, it was. [827—776]

On recross-examination by Mr. ALLEN the said witness testified as follows:

Q. You don't know anything about Mr. Goldberg and his relation towards the United States Government, in the purchase of supplies at Bremerton, do you? A. No, sir, I know nothing about it.

Q. You don't know anything about those matters at all? A. I know nothing whatever.

Q. You don't know anything about the matter of the purchase of the assets of the American Iron & Metal Company by Mr. Goldberg?

**[Testimony of Edwin F. Meyer, for Defendants
(Recalled).]**

EDWIN F. MEYER, direct examination (continued) by Mr. SHIPLEY.

Q. Mr. Meyer, you have stated the character of the work performed by you in your general duties up to the middle of 1906, as I understand it? State to the jury what the conditions were, now, subse-

(Testimony of Edwin F. Meyer.)

quent to June, 1906, in the General Storekeeper's office. A. Subsequent to that time?

Q. Yes, sir, from that time on, any changes that occurred, any subsequent changes, if any?

A. Mr. Kettlewell was transferred from the Navy Yard in December, 1906, and there was that change. I took the duty—the office which had been vacated by him, and the duties he performed. [828—777]

Q. Now, they were what, just state to the jury, now, what you did from that time on?

A. The ordinary duties of chief clerk, that is, attending to the correspondence and the regulation of the office. In addition to that, I had the clothing and small stores and the provisions, I continued to perform. The yard began to grow about that time, increased work generally, and there would be a large number of requisitions which became necessary to be prepared, and I attended to those duties.

Mr. ALLEN.—You say you prepared those?

A. I attended to those. There were assistants in the office, who assisted in the preparation of them, did the physical work, for the most part.

Q. Your position in that office at that time, so we may understand it, was one which required you to supervise, generally, the work and the performance of the duties, by the various subordinates or clerks?

A. Yes, sir.

Q. And when you say the duty fell on you to do a great many of these things, you don't mean to tell the jury you did the actual physical work, and writing, but that you supervised it?

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—I object. It is certainly leading in form.

Mr. SHIPLEY.—I thought we could expedite it in that way.

By the COURT.—When objection is made, of course it is leading.

A. Why, the actual physical work, in most instances, was done by assistants in the office. I had the work of a supervisor, in character, and very frequently did a great deal of the actual physical work, when we were rushed.

Q. Now, then, working under your supervision, you had what clerks, performing what duties?
[829—778]

A. Well, we had what is known as Inspection Call Clerk, clerk in the office who received dealer's bills and the report of the receiver at the navy yard of freight coming in. It was his duty to issue an inspection call, covering that material, and forward that inspection call to the Board of Inspection. We also had in the office what is known as a public bill clerk. It was his duty to receive that inspection call, and when the Board of Inspection made the report, to put it in shape for payment. We had, not part of that office, but in 1906 it was connected with it, a bookkeeping division. It was just a little to the end of the office, in which there were probably two or three bookkeepers, who were recording these various transactions, and we had a messenger, who assisted me in the correspondence work, and I think in 1907, or early part of 1908, we had a man who as-

(Testimony of Edwin F. Meyer.)

sisted me in the preparation of requisitions, that is to do the physical work. The requisition work, about that time, began to grow with the Navy Yard.

Q. Now, up to the late fall of 1907, what was the volume of requisition work, as compared with the year 1908?

A. Well, the volume of requisition work prepared by the general storekeeper, began along about the middle of the year 1907, and it increased a great deal the latter part of that year, and continued from then on to the present date. 1908 it was extremely large, particularly in the early part.

Q. Mr. Meyer, up to the month of December, 1907, to what extent had you had personal knowledge and experience in the matter of preparation of requisitions, making of estimates, etc.?

A. All during my service with the Government, I had a little experience in connection with the forms, etc., but we didn't—as I stated, the Storekeeper didn't—was not called upon to [830—779] prepare requisitions in that way. They were then prepared in the office, in the requisition office of the various yard departments. Along about 1907, that duty devolved upon the storekeeper.

Q. What period in 1907, please?

A. Well, I don't know. I don't recall now. It was subsequent to the time the department ordered all yard stores turned into the naval supply fund, and sometime a year or so later, I think.

Q. Now, you say up to that time, all of these departments of the five component departments of the

(Testimony of Edwin F. Meyer.)

Navy Yard over there, had what they call a requisition office or requisition clerk?

A. Requisition offices and requisition clerk, yes, sir, an office distinct from the Storekeeper's office.

Q. Then, sometime in the latter part of 1907, the requisitions commenced to be prepared more generally in the Storekeeper's office?

A. Storekeeper's office; yes, sir.

Q. From that time on they fell more under your eye—

A. Direction, yes.

Q. Supervision? A. Yes, sir.

Q. About what time was it, to your memory, that Mr. Spear was superseded, the paymaster who was in charge in 1907?

A. I think January 1st or 2d, 1908. It was the early part of the year.

Q. And just describe to the jury the conditions that existed there at that time.

A. Well, the conditions that I described just a short while ago, existed at that time, and it continued until Paymaster Spear arrived and after he arrived, that is with respect to the [831—780] duties I performed.

Q. Those were—

A. That is, he found me there, acting as chief clerk, that is principal clerk, performing the duties of the correspondence man and looking out for the correspondence of the office, the preparation of requisitions for the up-keep of the stock in the yard, as well as the provisions and clothing.

Q. What were the duties of the General Store-

(Testimony of Edwin F. Meyer.)

keeper at that time?

A. Supervisory, the official in charge of the office. He saw that the clerks performed their duties, that is, through me.

Q. You have described, in a general way, the relation that the General Storekeeper's office there bore to the other departments in the yard. Was there any change subsequent to this time?

A. No, sir, condition remained the same.

Q. It continued that way, did it, up to how long, the same general relation?

A. Well, the general conditions remained the same. Paymaster Spear, when he arrived, assumed—that is, the general requisition work was taken over.

Q. What do you mean by that?

A. Well, the up-keep of the stock was taken over more in general, after he arrived. He saw what the requisition office, under the Storekeeper, required for the up-keep of stock, more than prior to that time. I insisted, before his arrival there, on the preparation of a large number of requisitions in the various requisition offices, but, I think, after he arrived, his instructions were that we would up-keep the stock.

Q. And the burden, from that time on, was it thrown upon the [832—781] General Storekeeper's office, in a greater share, that is the keeping of requisitions for supplies?

A. In a far greater share; yes.

Q. What had been the fact, up to that time, in

(Testimony of Edwin F. Meyer.)

regard to large portions of the supplies used by the navy, being drawn from other places of supplies than the Puget Sound?

A. Well, for articles that were required for ships, we did not maintain a very large stock at Puget Sound, and when a ship would require those articles, we would issue them from stock, any articles we had or could supply, and we would return the requisition to the ship and request them to requisition for anything we happened not to have, on the navy yard at *Mayor* Island, which we then considered the basis of supplies for the Pacific Coast. That was likewise true of clothing and provisions. We rarely, if ever, bought any provisions for this store prior to Paymaster Spear's arrival.

Q. State what arrangement or procedure was inaugurated by Mr. Spear, looking to the establishment of this yard as a point to afford supplies?

A. Well, shortly after Paymaster Spear reported for duty, we discussed the matter at length and he decided that he wanted this yard to take its place along with *Mayor* Island in supplying requisitions to ships, and he wanted kept in stock from time to time, articles that were constantly being called for by these ships, by the ships in these waters. He didn't wish to be constantly drawing from *Mayor* Island, and we thereupon began the preparation of numerous requisitions for the building up of our stock at Puget Sound.

Q. And that commenced about what period?

(Testimony of Edwin F. Meyer.)

A. Shortly after he came—February or January.
[833—782]

Q. Of what year? A. 1908.

Q. You spoke of keeping up supplies for ships to be supplies from this navy yard. To what ships did you have reference?

A. The vessels which were in the habit of rendezvousing in these waters, the Pacific Fleet, we call it.

Q. Commencing in the early part of 1908, you commenced to prepare and issue requisitions for the furnishing of supplies for the purpose you have just related to the jury? A. Yes, sir.

Q. I wish you would describe to the jury, now, what you mean by “requisition”; explain the matter fully to the jury.

A. Requisitions, exactly what the term implies; that is “a call.” It is a paper, instrument, I might say, by means of which the officers express their desire for material. Of course, it could—in this instance, material. It might be money or any other thing. We are dealing with material now. There are various kinds of requisitions. There are two general classes, what we call “ships requisitions” and “yard requisitions.” These requisitions emanate in the various departments of the ships and from the navy yard.

Q. What do you mean by “regular requisitions.”

A. What we term over there a “regular requisition,” is a requisition that is not an L, or local requisition. A requisition that went to the Bureau at

(Testimony of Edwin F. Meyer.)

Washington for approval.

Q. That is a regular requisition?

A. Yes, sir. A local requisition was a requisition issued under the authority of an Act of Congress, sometime in 1908, I guess it was, or 1909, limiting the local purchase to \$500. I don't recall just the year that was, it was sometime in 1909, I [834—783] guess.

Q. That came into vogue, did it not, at a later period than the spring of 1908? A. Yes, sir.

Q. Were those what you refer to as the "L requisitions"? A. Yes, sir.

Q. The requisitions which you have referred to as being issued for less than a certain maximum of \$500, were termed what kind of requisitions?

A. Subsequent to that act, it was termed a local requisition, but there was no difference prior to that time. They were all regular requisitions.

Q. The requisitions that were being issued from that office, that is meaning the Storekeeper's office at Bremerton, during the period say from January to June, 1908, were they regular requisitions or what is termed the "L" requisitions?

A. They were the regular requisitions, required the approval of the authorities at Washington.

Q. State to the jury what you mean by that, requisitions having the approval of the authorities at Washington.

A. A requisition emanating in any office, any of the offices in the navy yard, were sent to the Storekeeper. That requisition bore the signature of the

(Testimony of Edwin F. Meyer.)

officer preparing it. It came to the Storekeeper's office, who would register it. The Storekeeper would sign it and it was then forwarded to the respective bureau at Washington, that is the bureau at Washington representing the bureau in the navy yard, and if approved by that, then the Bureau would forward it to the Paymaster General, who would either advertise it, authorize its purchase through the local pay office, or some other pay office, or would order it shipped from some other navy yard to this yard. That is the course the [835—784] regular requisitions took.

Q. Now state to the jury what you mean by advertising, in that sense you have just mentioned.

A. Advertise, in the sense that I have always understood it in the navy, is the process the Bureau at Washington has of asking bids; that is, they prepare printed proposals and send them to the various purchasing pay offices, to be distributed to the various dealers, and would, by the Bureau, be forwarded to these manufacturers and dealers all over the country, and they would insert in the various newspapers, and advertise, calling attention to the fact that bids were being called for at Washington on certain articles, describing, in a measure, the articles called for.

Q. Now, was that a subject that the Storekeeper's office, or any of the clerks in the Storekeeper's office at Bremerton had any connection with or had anything to do with? A. With the advertising?

Q. Yes, these matters you just spoke of?

(Testimony of Edwin F. Meyer.)

A. No, sir.

Q. No authority nor duties to do in connection with it? A. No, sir, nor function or anything else.

Q. Now, in speaking of the Bureau acting upon this matter, and having these bids called for, to what do you refer?

A. The Bureau of supplies and accounts. That is the Paymaster General of the navy.

Q. That Bureau has what relation to the navy yard here in Bremerton?

A. It is the head of the pay and general storekeeping establishment of the navy.

Q. And has jurisdiction over all of the storekeepers throughout the Government service? [836—785]

A. Throughout the service; yes, sir.

Q. That is of the navy? A. Yes, sir.

Q. You spoke of requisitions being prepared by officers in the departments. What do you mean by that?

A. That is the naval constructor, for instance, was in charge of the Construction and Repair Department.

Q. Where?

A. For instance, in the various navy yards, there is a naval constructor, who is at the head of the Construction & Repair Department, the department that looks after the construction and repair of ships. These naval constructors maintain a requisition office in their respective departments, and whenever they wanted any material, and it was not in store, they

(Testimony of Edwin F. Meyer.)

would put in operation the preparation of a requisition for that article.

Q. And this officer bore what rank in the United States Navy?

A. Usually a naval constructor might be a Junior Lieutenant, or Lieutenant or Lieutenant-Commander, may be a Commander.

Q. He was a commissioned officer?

A. He was a commissioned officer in rank.

Q. What other departments were there, now, in which this same process was gone through with in naval construction?

A. At that time, in any one of five departments, the Department of Engineering; Department of Yards & Docks; Department of Ordinances; Department of Equipment.

Q. Designate the date. A. 1908.

Q. During the entire year of 1908?

A. Yes, sir; your questions, I understood, were all directed to [837—786] that particular period.

[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants Edwin F. Meyer and Emar Goldberg. Vol. 5, Pages 647 to 786. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 14, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [838]

Q. Your reference made here obtains to the Puget Sound Navy Yard at Bremerton? A. Yes, sir.

Q. These different five departments were co-ordinate departments in the navy yard?

A. In the navy yard.

(Testimony of Edwin F. Meyer.)

Q. And each of those departments had, as its head or chief, a commissioned officer of the United States Navy? A. Yes, sir.

Q. Now, when these yard requisitions were prepared from these different departments, and sent to the Storekeeper's, General Storekeeper's office, state how they were prepared, what they would include, how they were made out.

A. Well, the requisition would state the Bureau under which the purchase was to be made, that is, if it was under Construction & Repair, the Bureau of Construction & Repair, it would state the appropriation under which the purchase was to be made, that is the Congressional appropriation. It would give the purpose for which required; it would give the classification of the article, the number or quantity of articles wanted, the estimated cost, the time required, the specifications, and there would be a given number prepared, about seven or eight copies of them, all of those forwarded to the Storekeeper's office for signature.

Q. Now, when these requisitions, with these number of copies, were issued from these different departments, where did they go to?

A. To the Storekeeper's office directly.

Q. And all of the copies were?

A. And after being recorded by him, one copy was returned to the office initiating these requisitions, another was kept in the [839—787] files of the Storekeeper, and four copies forwarded to the Bureau of Supplies and Accounts at Washington.

(Testimony of Edwin F. Meyer.)

Q. At Washington? A. Yes, sir.

Q. Now, when these copies were brought into the General Storekeeper's office, did they fall under your supervision, as the Chief Clerk, or performing the duties of Chief Clerk at that time?

A. Yes, sir; they came to my desk.

Q. Just state to the jury what your duties were with reference to that.

A. Why, I turned them over, as a rule, to the assistant in the office, a man who assisted me in the preparation of requisitions, who would ascertain whether or not the articles were in store, and if they were not in store, he places a little stamp on it, under which he marked that the articles called for are not in store, or due under existing contracts. Then he would give that requisition a number for identification, he would prepare it for the Storekeeper's signature, and would return it to my desk, and from my desk in to the Storekeeper's desk.

Q. What requisition do you refer to there?

A. These requisitions emanating in the offices of the Yard Departments.

Q. They were given a number there then at that time?

A. In the Storekeeper's office. All of the requisitions were numbered in the Storekeeper's office, for identification.

Q. Now, then, in case the supplies called for were in stock, you mean by that "on hand"?

A. Were on hand.

Q. In the charge of the Storekeeper in the ware-

(Testimony of Edwin F. Meyer.)

house? [840—788] A. Yes.

Q. What was done?

A. Well, we called the attention of the officer who initiated that requisition, called his attention to the fact the articles were in store. Frequently he wanted what he requisitioned for, in addition to what we had in store. They were in the habit of investigating our stock prior to the preparation of these requisitions.

Q. In case the articles called for were not in stock, then what was done?

A. The requisitions would be placed in the Storekeeper's desk for signature, and returned, after being signed, to my desk, or to the desk of the party who looked out for the mail to be distributed. These requisitions, a copy of it was detached and sent over to the purchasing pay office yard, a copy sent to the head of the department originating the requisition and the other copies to the Bureau of Supplies and Accounts.

Q. Where? A. Washington, D. C.

Q. What was the purpose of sending the copy to the Bureau of Supplies and Accounts, at Washington, D. C.?

A. No requisition could be acted upon without his approval.

Q. What was the procedure with reference to the requisition that was sent to Washington?

A. The procedure would be to have the technical head of the Bureau at Washington to first approve the requisition.

Q. What do you mean by approving of the requisition?

(Testimony of Edwin F. Meyer.)

tion by the technical head of the department at Washington?

A. Mean that the officer, who was at the head of the Bureau at Washington, would first be called upon to pass upon the requisition, [841—789] upon its necessity, etc., and its form in regard to specifications, etc., and the necessity for the articles.

Q. You refer to a technical officer. What do you mean by that?

A. I mean an officer who was skilled in that particular line of work. For instance, there was a naval constructor at the head of the Bureau of Construction & Repair at Washington, who was an officer who had technical information relative to the construction and repair of ships.

Q. Anything that involved the purchasing of supplies for construction or repair of ships, then, would fall under the supervision of an expert in that line, in the Bureau of Supplies and Accounts in Washington, before the requisition was approved, is that the fact?

A. Under the Bureau of Construction and Repair at Washington.

Q. That is the truth, is it?

A. That is the truth, yes, sir.

Q. Then, if the officer, you refer to as the technical officer of the Bureau, satisfied himself that this was a proper purchase to be made, how did he express that fact?

A. He approved the requisition on the face of it

(Testimony of Edwin F. Meyer.)

and forwarded it to the Bureau of Supplies and Accounts.

Q. And then what would be done in the ordinary course of business?

A. The Bureau of Supplies and Accounts would authorize that the requisition be furnished, if it saw fit. Then they would either be purchased by one of the purchasing pay officers, or shipped to the navy yard, from some other navy yard, or it would be advertised, if there was sufficient time.

Q. Now, suppose that it was to be purchased by the local pay office, then what would be done?
[842—790]

A. It would indicate that on the face of the requisition, to be purchased by the Navy Pay Office or the purchasing pay officer, Seattle, Washington, for instance, and would forward the first and second copies of that requisition to the pay officer.

Q. Now, this requisition, before it went back to Washington, what would it show with reference to the character of the articles to be purchased, estimated cost, time of delivery and things of that kind. Just explain that to the jury.

A. Well, it would show the quantity of material we wanted, a description of the material and the specifications. It would show the unit price each or per pound. It would show an extension of that item or an aggregate amount of the articles.

Q. In order that the jury may understand what you mean by those technical terms, I wish you would describe to the jury just what you mean by each of

(Testimony of Edwin F. Meyer.)

those terms "extension of unit price."

A. For instance, we wanted white lead, we will say. We asked for fifty thousand pounds of white lead. We will describe the package we want it in, 100 pound cases or fifty pound cases or twenty-five pound cases, as the case may be. We will say we estimated it to be worth about eight or ten cents a pound to the unit, because in an extension of that kind—

Q. What do you mean by extension?

A. If it was fifty thousand pounds at ten cents a pound, that would carry the extension \$5,000, and then we would make the requisition in the aggregate \$5,000, and submit it to the officer.

Q. Now, when that requisition reached the Bureau, what purpose was subserved by having the estimated cost and the unit price and the total amount of stock purchased by the requisition?

Q. When the requisition was prepared, was the estimated price placed [843—791] upon all of the copies of the requisition?

A. All copies with the exception of the original ribbon copy.

Q. Why was that?

A. Well, it *was regulation* prescribed, that the estimate be not placed on the original, and on all others. The original bore the signature of the officers. The others did not.

Q. Where does the original remain?

A. The original, after being approved by the various bureaus and officials, the original is attached to the first of the public bills and payment of ma-

(Testimony of Edwin F. Meyer.)

terial, and that lodges finally in the Treasury Department.

Q. The original would show what with reference to the quantity of goods, in regard to the stock to be furnished, what would the original show?

A. The original would show everything that is on any other copy, with the exception of the total estimate, and in addition to that, it would show the signature of the officers.

Q. Now, the other copies which bore the estimate, as I understand, that was not on the original?

A. Not on the original, the only copy it was not on.

Q. The original went into the Treasury Department finally? A. Yes, sir.

Q. Did not bear the estimated cost? A. No, sir.

Q. The other copies, what was done with those?

A. There was one copy in the files of the Storekeeper, a copy in the files of the Bureau of Supplies & Accounts, at Washington, D. C., and in the event the requisition required the approval of the technical head or chief at Washington, one copy lodged in that bureau, a copy with the purchasing pay officer [844—792] making the purchase, and another copy in the Yard Department concerned, if it concerned them.

Q. Under the regulations and the practice followed in the General Storekeeper's office, was or was not the estimated price placed upon these different copies that were lodged at these different offices?

A. All copies, yes, sir.

Q. Now, you have given a statement in detail of the

(Testimony of Edwin F. Meyer.)

procedure with reference to the requisitions which emanated from the different departments in the Puget Sound Navy Yard. You also referred to ship's requisitions. Describe to the jury what you mean by them, and what is the difference between those and the requisitions you have just been describing.

A. Well, these various technical bureaus at Washington, provide an allowance for each department of the ship. There is a department on the ship corresponding to the departments in the navy yard, and the departments in Washington. Those various departments have an allowance for each ship. Whenever an article is wanted to replace an article on the allowance, or for ordinary consumption, they initiate requisitions to replenish those articles.

Q. These ship requisitions would be prepared by whom?

A. In the offices of the heads of departments on board the ship.

Q. And there were two styles of ship requisitions, one known "in excess," and one "not in excess"?

A. Yes, sir.

Q. Describe to the jury what are meant by those.

A. This allowance tax, I just referred to, would express the number of articles, quantity of articles that the ship was allowed [845—793] for a given period, say a period of six months, and at any time, the beginning of the six months, the ship could requisition for their entire allowance. If they consumed all of the allowance in that period, they would have to submit additional requisitions, of course, and

(Testimony of Edwin F. Meyer.)

that would be an "in excess" allowance. Anything allowed for a period of six months, would be called "not in excess."

Q. What would be the difference in the procedure in your office where those two requisitions would come in those two different forms?

A. We are authorized to issue material on a ship's requisition, not in excess of allowance, without the approval of the authorities at Washington, but in the event it is "in excess," it would have to have prior approval by higher authority.

Q. In the event it is in excess? A. In excess, yes.

Q. In either event, whether they were in excess or not in excess, after the Storekeeper was called upon to furnish the material and he didn't have it in stock, what was the procedure? A. At what period?

Q. Well, say in the spring of 1908, from January to May?

A. At that period we would make a requisition for it, either for that quantity or for a quantity for stock, get a larger quantity, and issue to the ship whenever the material was received from stock, that is, if the article was of that nature that we could purchase. There were some articles we obtained by shipment from other navy yards, some articles were manufactured in the navy yard.

Q. If the material was not in stock, and was not manufactured [846—794] in the yard, then would it, or would it not, be purchased just by requisition initiated in your office, the same as other material?

A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. What is meant by the expression, "request cards"?

A. That is another form of requisition. Just prior to 1908, I don't know just how long, the Bureau prepared a special form of requisition, which we called "Request card." It was used only in the case of articles that we wished purchased after advertisement.

Q. By whom were those request cards made?

A. Only in the office of the Storekeeper, by the requisition clerk, in the requisition office.

Q. Now, either in the case of the ship's requisitions, or these request cards, state what the facts are in regard to advertising.

A. Well, the request cards, almost invariably, resulted in the Bureau advertising the articles, because it wasn't a form on which any article could be purchased. It frequently happened, however, after preparing these request cards, the quantity called for would be small, and the Bureau would prepare a requisition, what we call a Bureau Requisition, that is, a requisition emanating in the Bureau.

Q. Bureau of what?

A. Bureau at Washington, and authorize some pay officer to purchase it. That was a matter within its discretion.

Q. What was the fact in regard to advertising, in the case of goods being required to supply the demand on ships' requisitions?

A. Well, ships' requisitions would lodge in the Storekeeper's [847—795] office. The Storekeeper would, acting upon the authority of the ship's requisition,

(Testimony of Edwin F. Meyer.)

tion, prepare what we call "open purchase requisitions." We didn't prepare request cards for anything of that kind. We prepared open purchase requisitions.

Q. The term "open purchase requisition" appears on many of these folders in this case? A. Yes, sir.

Q. I wish you would describe to the jury what *the* imports.

A. It is a requisition which is prepared in the office of the Storekeeper, or any other office. It shows these various things, the number of articles required, and all of that, and after approval by the approval by the Bureau concerned, it is forwarded to the Purchasing Pay Officer of some Navy Pay Office, and he authorizes what is known as "open purchase" of these articles.

Q. What is meant by "open purchase"?

A. That is purchase after competition, but without advertisement.

Q. That is, without public advertising, which, as you have described, was done under the orders of the Bureau at Washington? A. Yes, sir.

Q. And without advertising, would be, in that case, the call for bids locally?

A. The sending of bids to dealers.

Q. Did that waive competition?

A. No, sir. In fact, unless especially ordered by the Bureau, competition is not waived in any instance of which I am aware.

Q. Now, you have spoken about the preparation of different forms of requisitions in your office, in the

(Testimony of Edwin F. Meyer.)

Storekeeper's [848—796] office at Bremerton.
By whom were those prepared?

A. Well, they were prepared under my supervision.

Q. At what time?

A. Beginning, I presume, 1907, until my separation from the Service.

Q. About what time in 1907?

A. Well, in fact, even prior to that time, and a large number of them beginning about the middle, maybe earlier, part of 1907, middle of 1907 would be more like it, I guess.

Q. Who did the actual physical work on the making of these requisitions?

A. Why, an assistant I had in the office at various times. I prepared some of them myself.

Q. What would be your function in the preparation of those requisitions?

A. To see that the requisitions were prepared and in anticipation of the needs, and that they were in proper form for the General Storekeeper's signature. That is, I indicated the quantity, and saw that the specifications, which were authorized or approved, they were properly inserted.

Q. What do you mean by the preparation of the specifications?

A. Well, there were, in general, the specifications are prepared under these various technical Bureaus at Washington, copies of them printed and sent to the navy yard here. We used those generally.

Q. Now, when you say you mean after preparing

(Testimony of Edwin F. Meyer.)

the specifications, what did you do with reference, say, to a certain article being purchased, in the way of designating under what specifications?

A. Why, all of these specifications, they are given numbers, [849—797] and we refer to the number of that specification, for convenience, rather than the printed specifications. There are times, however, when the specifications are not printed, and we refer to some previous purchase, which was made by some technical officer, and we copy the specifications from a previous purchase.

Q. And, in making your notes for the clerk who did the actual physical calculation of these requisitions, you would designate what, on your notes to him, to be followed?

A. I would indicate, as near as I could, very frequently the quantity. I would indicate the specifications, if they occurred to me, without having to make an investigation of it, or it would be up to him, in that case, to ascertain the specification from which the last purchase was made. He usually had more time than I had, and if the estimated cost occurred to me, that is, if it was known to me, if it was fixed in my mind in any way, shape or form, I would indicate that on it, and very frequently, the time of delivery. Most frequently the time of delivery, because I wouldn't initiate a requisition unless there was some need for it, and the time would be fixed, that would be determined before I would indicate the purchase, that the purchase was necessary.

Q. And from this memorandum, the requisition

(Testimony of Edwin F. Meyer.)

would then be prepared by the clerk, whoever he was, that had the duty of preparing it?

A. Yes, sir, the assistant.

Q. And then what would be done with that requisition, after it came from his desk?

A. It would be returned to my desk. I would observe—see that it was in proper form, the original, for the Storekeeper's signature. [850—798]

Q. And then what would you do with it?

A. I would send it in to the Storekeeper's desk for signature, or take it in.

Q. How often, during the day, would you be called upon, in the ordinary routine of the work, to send requisitions or other papers, in to the General Storekeeper's office, or desk, for signature, during the spring of 1908, I am referring to?

A. We were at the time, during that period, we kept the papers moving all the time. That is, we did not permit them to remain idle on my desk. The office boy or someone there would move them all the time, take them to his desk, he would sign them at intervals when he wasn't engaged in another matter, and this boy kept the papers moving back and forth.

Q. At this time did you have any other duties calling upon your time, and for your observation, than the mere examination of these requisitions that were submitted to you, from the desk of the man who had actually done the work on them?

A. At that time I had innumerable duties.

Q. Just describe to the jury what the facts were at that time.

(Testimony of Edwin F. Meyer.)

A. Well, we had in the harbor at Bremerton a large number of cruisers, calling constantly for material, sending requisitions in to the Storekeeper's office. I had to receive those and attend to the correspondence in connection with them. We had to remember any outstanding contracts to purchase. I had to see that these—that there was correspondence, the correspondence was attended to between the contractors and the storekeeper, and we had considerable correspondence from the Bureau, about these various ships, and the ships were continually drawing clothing and small stores and provisions; those duties.

Q. And to what extent did those various duties impose a tax [851—799] upon your time and energies at that time?

A. Why, I frequently entered the office at eight o'clock, or prior to that time. The office hours begin at nine, as a rule, but we required all hands to work overtime then, and I very frequently remained during lunch hour, and worked until the boat was about to leave in the evening.

Q. We are speaking now of the early part of 1908?

A. Well, the early part of 1908, I didn't leave Bremerton on that boat, but later on I did. I would work until six or half-past six o'clock in the evenings.

Q. And were other clerks kept working overtime, in the same way?

A. Yes, every clerk in the office we worked an hour or two overtime every day.

(Testimony of Edwin F. Meyer.)

Q. Now, why was it, what was the cause of this calling upon the clerks to devote this overtime work, at this particular period?

A. An unusual amount of work, and very few clerks to handle it.

Q. How many clerks were there at that time?

A. I think, when Paymaster Spear came, we had in the office there probably, I think four, four clerks, with the exception of two or three bookkeepers, might have been six or seven. Four clerks in the office, in the requisition office, that is the office which we call the requisition office, which was also the Chief Clerk's office, and there were two or three men in the bookkeeping office, but he increased the force shortly after he came, by two or three temporary men.

Q. When was that?

A. Must have been along about April, March or April sometime.

Q. That was about three months after Paymaster Spear arrived? A. Yes, sir. [852—800]

Q. And when was it that the requisition offices were consolidated under the Storekeeper?

A. Oh, that was after the visit of Secretary Meyer at the Puget Sound Navy Yard, in 1910.

Q. That was way after this time?

A. Yes, this consolidation took place after that time. We got an additional two men from the other yards at that time.

Q. Then, during the entire period of 1908, prior to this consolidation, requisitions continued to come

(Testimony of Edwin F. Meyer.)

into the Storekeeper's office, from the various departments, five in number? A. Yes, sir.

Q. After the consolidation you have spoken of, then the work was managed on a different basis?

A. All requisitions then were prepared in the Storekeeper's office, after the consolidation.

Q. But that condition of affairs did not come into existence until about 1910?

A. About 1910, I think after 1908 a very large—a larger number of requisitions were prepared in the Storekeeper's office than ever before.

Q. When was that?

A. After 1908, we continued to prepare in most instances—

Mr. ALLEN.—You say after. Do you mean including 1908?

A. Yes, included 1908, we continued to prepare, in most instances, the requisitions; but the technical office men would prepare in their respective offices, requisitions, however, for special articles articles that were not in store.

Q. And the reason for this large increase in the preparation of requisitions in the General Storekeeper's office, did that have anything to do with any increased activity in the navy yard, [853—801] about 1908?

A. Due to the presence of the ships there, they were constantly being docked and repaired, they were needing supplies.

Q. Was there any peculiar, extraordinary activity along about the early part of 1908, and there-

(Testimony of Edwin F. Meyer.)

after, in that respect?

A. In 1908 the Pacific Fleet was augmented by three or four large cruisers. What we called the big four, came along about the latter part of 1907 or 1908.

Q. What do you mean by that?

A. Vessels of the type of the "West Virginia," "Maryland," "Tennessee" and "Washington." They, if I remember, came around about that time.

Q. Came from where?

A. Well, from the east coast, they made a cruise around the world, coming the other way, and they added to the fleet that was here at the time, the "Pennsylvania," "Colorado" and "Milwaukee," and oh, a number of other vessels, the "California."

Q. They became part of the Pacific Fleet, did they, upon their arrival?

A. Yes. I don't know whether they actually became a part, but—yes, they were identified with them.

Q. You have identified them in this case?

A. They were called a special cruising trip or something.

Q. Whatever may be the fact in the technical sense, that has been the expression under which they have been designated in this trial?

A. Oh, along about that time we were advised of the coming to this coast of the Atlantic Battleship Fleet.

Q. When was this?

(Testimony of Edwin F. Meyer.)

A. Along 1908, the early part.

Q. During the fall, how early in the fall of 1907, did your [854—802] office in the Navy Yard at Bremerton, commence preparing to supply this Pacific Fleet?

A. Well, we didn't commence in the fall. There were only a few items that we furnished those ships. It was after Paymaster Spear's arrival that we made any attempt to keep in store, articles for these ships. Prior to that time, we would give them only such articles as we had, that would not be called for for the Yard Department, and would forward other requisitions on *Mayor* Island, or return to the ship and ask them to requisition on *Mayor* Island, for *Mayor* Island, at that time, was considered the supply depot for the Pacific Coast.

Q. Now, in the fall of 1907, did there any requisitions reach your yard for furnishing any of this Pacific Squadron?

A. Yes, sir, quite a large number of requisitions.

Q. How many ships comprised the Pacific Squadron, so called, in the early part of 1908?

A. There must have been ten or a dozen in the harbor there.

Q. Were they the following ships, the "Washington," "California," "Colorado," "St. Louis," "Tennessee," "W. Virginia," "Maryland," "Pennsylvania" and "Milwaukee," comprised in that fleet?

A. Yes, sir, I think they all were. Maybe some additional small ones, the "Princeton."

Q. Now, in the preparation of and furnishing of

(Testimony of Edwin F. Meyer.)

these different Pacific ships, what steps were taken in regard to the preparation of requisitions and accumulating of supplies?

A. Well, we began the preparation of requisitions for the purpose of laying in stock of these articles, in order that when the ship would requisition for them, they would be issued from stock. Our effort was—the proper way, to requisition [855—803] for a sufficient number, when we were requisitioning for it, to issue to a number of vessels. We tried to anticipate the requirements of these vessels.

Q. In the preparation of these requisitions, state what was done in regard to providing the estimates, time of delivery and matters of that kind, that were inserted in the requisition.

A. Well, the time of delivery, of course, would be governed chiefly by the need. The ship would indicate on the requisition about when the articles would be wanted, in the case of some of the items, and our requisition would endeavor to carry out—that is, to comply with their requirements. In the case of articles to replenish stock, he would base our time of delivery upon the condition of the stock, and the demand; that is, if the stock was low, he would endeavor to submit a requisition to replenish that stock as quickly as possible.

Q. Refer to the estimates that were placed in this requisition. State to the jury what is meant by that term, in the preparation of the requisition.

A. The estimate is the cost that—the cost of that stuff would be inserted in the requisition. That is,

(Testimony of Edwin F. Meyer.)

it is supposed to be the governing matter relative to the cost of the article. I will explain it this way. These requisitions bore a unit, which is intended to total an aggregate. Whenever these requisitions are approved, it shows an obligation of that amount against the respective appropriation. Congress, in allowing, in appropriating money, will allow so much money, for instance, to the Construction & Repair Department, the amount of that requisition obligated against the Construction & [856—804] Repair appropriation. It is debited and it is credited with any difference that might be, between the purchase, the actual purchase cost and the estimated cost.

Q. And the purpose of inserting the estimate in the requisition, is what?

A. It is for the purpose of keeping—primarily, for the purpose of keeping a record of the Bureau Appropriations.

Q. And for whose information?

A. The Accounting Department of the Government at Washington.

Q. Where? A. Washington.

Q. In other words, it is to keep the Bureau of Supplies & Accounts advised as to what you are approving to the yard in the matter of purchase?

A. As to its obligations; yes, sir.

Q. By whom were these estimates made?

A. By the party preparing the requisitions. If the requisitions were made in the Yard Departments, they are made by someone in connection with that

(Testimony of Edwin F. Meyer.)

department. If they are made in the Storekeeper's office, by someone connected with the Storekeeper's office.

Q. What do you mean by Yard Department?

A. These technical yard departments.

Q. In other words, the requisitions that came from the Naval Constructor, or the Engineer, official of some of these co-ordinate branches of the yard, would bear upon their face—

A. The requisitions would be complete in detail, with the exception of the Storekeeper's signature. It would show all of the information that it would show if it had been prepared by the Storekeeper.

[857—805]

Q. In each of these cases, that estimate was inserted there, so the Bureau at Washington could keep a check on the demands that were being made upon the appropriation for the use of that particular department?

A. Yes, sir, an idea of what it was approving.

By Mr. ALLEN.—You mean an estimate was placed upon the requisition in your office?

A. In the department in every instance.

[Testimony of R. E. Downey, for Defendants.]

R. E. DOWNEY, a witness produced on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. MORRIS.

Q. State your full name. A. R. E. Downey.

Q. How long have you lived in the city of Seattle?

A. A trifle more than eighteen years.

(Testimony of R. E. Downey.)

Q. During your residence in this city, have you been connected with the Government in any capacity?

A. I was in the Government service and employ of the Navy Department, for a little more than six years.

Q. In what capacity connected with the Navy Department?

A. My first appointment, on September 15, 1900, I was appointed a clerk in the Commandant's office at the Puget Sound Navy Yard.

Q. And from the Commandant's office in the Puget Sound Navy Yard, [858—806] you went to what position in connection with the navy?

A. The following March, 1901, I was transferred as chief clerk to the superintendent constructor at Moran Brothers Company, who had charge of the building of the Battleship No. 14, the "Nebraska."

Q. And you were connected with the Government in the construction of the "Nebraska," for how long?

Q. I remained there from March, 1901, until May, 1903, as I recall it, when I was made chief clerk in the United States Navy Pay Office, in this city.

Q. And you remained as chief clerk in the Navy Pay Office in Seattle, up to what time?

A. The 30th day of November, 1906, my resignation took effect.

Q. Are you acquainted with the defendant, Edwin F. Meyer? A. I am.

Q. Were you acquainted with Mr. Meyer during

(Testimony of R. E. Downey.)

the time he was connected with the Navy Department, with the Storekeeper's branch of the Navy Department, at Bremerton, up to the time of his arrest? A. Yes, sir, I was.

Q. Were you acquainted with the persons with whom the defendant, Meyer, associated at such time? A. I was.

Q. Are you able to state to the jury whether or not you know the defendant's general reputation for truth and veracity, for honesty and straightforward dealings during said time?

Mr. ALLEN.—Where, here?

Q. Puget Sound Navy Yard?

Mr. ALLEN.—Over there or over here?

Mr. MORRIS.—Listen to the question. I don't like to be [859—807] interrupted.

A. I know the man's reputation very well.

Q. For the subjects I mentioned to you?

A. Yes, sir.

Q. Is his reputation good or bad?

A. His reputation is good.

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. You have been a long time friend and acquaintance of Mr. Meyer, haven't you?

A. I think that is correct.

Q. You think it is correct? A. Yes, sir.

Q. Aren't you as positive of that fact as you are the matters you have testified to?

A. The *state* will go without the word "think." It is correct.

(Testimony of R. E. Downey.)

Q. You are basing your statement of his general reputation upon your personal experience with him; is that true? A. Partially true, not altogether.

Q. With whom, in the city of Seattle, for instance, have you ever discussed the question of the probity and integrity of Mr. Meyer, in your effort to ascertain from other men what the general opinion in regard to his honesty was?

Q. With whom did you talk—read him the question and supply the word “Bremerton”?

(Question read.)

A. I talked, I presume, with every officer at different times at the Puget Sound Navy Yard, during the period of two or three years, and I have heard numerous officers— [860—808]

Q. You name them. Don't give general conversation, to whom have you talked? Did you ever talk to Paymaster Spear, sitting there?

A. No, Paymaster Spear was not in the service while I was there.

Q. To whom did you talk, then?

A. The Paymaster at the yard at the time that I have in mind was Paymaster Insley and Paymaster Brooks.

Q. Did you talk with each one of those men?

A. I have had conversations with every one of those men, and I know what they all thought of Mr. Meyer.

Q. Paymaster Insley?

A. Paymaster Insley, who is not now in the service.

Q. Who is this other man? Tell me one who is in

(Testimony of R. E. Downey.)

the service. A. Paymaster Brooks.

Q. Where is he?

A. The last I heard, he was at Indian Head, Maryland. I don't know where he is now. The Government might shift him any day.

Q. In regard to the integrity or honesty of different men in the employ of the Government, did you ever discuss with these men? A. I don't know, sir.

Q. Did you ever discuss with any officer of the navy yard, regarding the personal integrity of any other person other than Mr. Meyer?

A. I don't recall whether I had any particular conversation, in which I endeavored to find out about anybody especially. I don't know that I did.

Q. You recall vividly that your friend Meyer was discussed, do you?

A. I recall perfectly; I have talked with many of those men, [861—809] and I know the general reputation of Mr. Meyer with these men.

Q. Isn't it a fact Paymaster Insley was fired from the Government service for fraud?

Mr. MORRIS.—I object as incompetent, irrelevant and immaterial.

By the COURT.—He may answer the question. OBJECTION OVERRULED. EXCEPTION ALLOWED.

A. I don't know absolutely whether he was fired or resigned. I understood he resigned to keep from being court-martialed, but I don't know whether that is technically correct.

(Testimony of R. E. Downey.)

On redirect examination by Mr. MORRIS the said witness testified as follows:

Q. You stated you were a friend of Mr. Meyer's. Why are you a friend of Mr. Meyer's?

Mr. ALLEN.—I object as not being proper.

By the COURT.—He may answer the question.

A. Well, I am a friend of his,—in the first place I admire the man, because of his unusual efficiency. I never talked with him but what I learned something, and he is naturally an affable man, and I confess I had a personal liking for him; that is all.

Q. That feeling exists to-day the same as it did the time he was in the Puget Sound Storekeeper's office?

A. I am still a friend of Mr. Meyer's.

**[Testimony of Edwin F. Meyer, for Defendants
(Recalled).]**

EDWIN F. MEYER, direct examination (resumed) by Mr. SHIPLEY.

Q. Mr. Meyer, in answering the last preceeding question, you [862—810] stated what the primary purpose of the estimate was, using your language. What other purpose, if any, than that you have mentioned, did the estimates subserve?

A. The estimate served to limit the purchasing pay officer, in the purchase of supplies. That is, it has been always held as a rule, I believe they say it is a statutory provision, that the estimate should not be exceeded by these officers more than ten per cent. In other words, the Navy Department at Washington knows at all times that its requisition, approved, will

(Testimony of Edwin F. Meyer.)

not be exceeded more than ten per cent. That is the secondary matters.

Q. The estimate placed upon the requisition, did or did it not have any control over the Navy Pay Office, as to the minimum at which the article desired could be purchased?

A. Absolutely none, sir. The purchasing pay officer was the authority on that. He sent our proposals, and he certified in each instance that the purchase was made, after competition, to the lowest bidder. The estimate has nothing to do with it whatever. He could not exceed that estimate, however, more than ten per cent.

Q. It was his duty to purchase it as much below that as he could? A. Those are the regulations.

Q. As the market would permit?

A. —the law on the matter.

Q. Upon what was the estimate based?

A. We based the estimate on requisitions upon previous purchases, frequently upon information furnished by contractors, dealers in Seattle or elsewhere, upon information furnished us by the technical heads in the navy yard, or by the ships. When we have time to investigate, we usually go to [863—811] the contractor, or make an inquiry ourselves, as to the estimate, sometimes from catalogues in the office, but a catalogue is a very uncertain thing. We rarely, if ever, refer to them in making an estimate, because the people who publish these catalogues frequently had a list upon which there is a discount of fifty to one hundred per cent or more.

(Testimony of Edwin F. Meyer.)

Q. Now, did you have an accumulation of catalogues in the Storekeeper's office?

A. I tried to get a number of catalogues.

Q. I mean, now, referring to the early spring of 1908? A. I had just a limited number of them.

Q. Who initiated this system of acquiring and accumulating a number of catalogues?

A. After I took over the requisition work, I wrote, at the Storekeeper's direction, to a large number of manufacturers, all over the country, and requested them to send their catalogues to the Storekeeper's office for reference.

Q. You say, after you took over the requisition work? A. Yes, sir.

Q. Which was when, as to point of time?

A. In the fall of 1908, after Mr. Barnes relieved me of the duties of Chief Clerk.

Q. Then this accumulation of catalogues had not been initiated until after the period of transactions under investigation in this particular case, that is, up to the first of June, 1908?

A. There was a limited number prior to that time, just a few, that we had collected from the requisition offices in the navy yard.

Q. But the substantial accumulation of the catalogues, and especially in that line, occurred subsequent to that time? [864—812]

A. Yes, sir; after 1908.

Q. Was this effort made by you, subsequent to the early spring of 1908, accumulating this stock of catalogues, in furtherance of the effort on your part, to

(Testimony of Edwin F. Meyer.)

acquire knowledge and information to fit you to prepare these requisitions and estimates?

A. Yes, sir; I had all my time then to devote to the requisition work, and endeavored to acquaint myself with that feature of it.

Q. You say you had time, this was after the requisition work was separated from the other work?

A. Yes, sir.

Q. This was after Mr. Barnes had arrived?

A. Yes, sir.

Q. Which would be in the latter part of 1908?

A. Yes, sir.

Q. What was done in regard to acquiring information from dealers, in order to arrive at the fair amount to be inserted as an estimate?

A. Very frequently we would write the dealer, if the time permitted, asking for a quotation on the article, giving him a description, specification and quantity, and ask what it could be delivered at the navy yard for. Frequently, if the time did not permit, we would telephone some known dealer in the city.

Q. And in telephoning or endeavoring to secure this information, were you acting in furtherance of any scheme to defraud the United States Government?

Mr. ALLEN.—Is that a general question?

Q. I mean, now in the early part of 1908, if, in the securing information, if it was done for that purpose?

Mr. ALLEN.—Speaking generally? [865—813]

Q. Yes, sir. A. No, sir.

(Testimony of Edwin F. Meyer.)

Q. State to the jury what difficulty, if any, was experienced in obtaining information for estimates and fixing the estimates.

A. Well, we experienced considerable difficulty at various times. The articles required by the navy included almost every conceivable line of supplies, from anchors, chains, etc., to clothing, provisions, items of hardware, tools of every kind, and we occasionally ran across items that are very difficult to locate. We have considerable difficulty in fixing an estimate on them.

Q. You hold in your hand a folder; what exhibit number?

A. This seems to be exhibit 86 in cause 2040; that is last year.

Q. This hasn't been introduced, evidently, in this case. Examine this. (Showing witness purchase folder requisition No. 7, series 10.)

Mr. MORRIS.—That is the wrong requisition. You want 17, L. '11.

A. Yes.

Q. Do you know what that folder is?

A. This is the purchasing pay office folder for requisition 7, steam engineering.

Q. In order to have it identified we will have it marked.

A. It is for five items for the "Washington" and "Wheeling," ships "Washington" and "Wheeling."

(Whereupon said folder is marked A-101 for identification.)

Mr. SHIPLEY.—On this requisition, it was the

(Testimony of Edwin F. Meyer.)

Storekeeper's folder and not the pay officer's folder that we desired.

Q. Was there any variation in the matter of estimates and cost of articles?

A. Frequently there was a large variation, yes, sir. [866—814]

Q. What was the effect of that on the question of providing estimates, of the variation of the cost?

A. Our rule was invariably to make a liberal estimate on a requisition, in order that the purchasing pay officer may not have to delay the purchase, due to that ten per cent rule, that was in vogue at that time.

Q. Handing you open purchase requisition No. 36, L. Series 1911, I will ask you to state what that is.

A. This is the Storekeeper's folder of a local requisition, naval supply, 36 L., dated August 19, 1910.

Q. That has been offered in evidence, I believe, yet, in this case?

A. No, sir; and it is for three items, brushes, screws and plaster for—

Mr. ALLEN.—He has identified it. Are you going to offer it in evidence at this time?

Mr. SHIPLEY.—Yes, we are going to offer it.

Q. When was this folder produced in Court?

A. To-day, I think.

Q. One that Mr. House has just brought in, is it not? A. Yes, sir.

Mr. ALLEN.—What possible bearing would the folder of August 19, 1910, have?

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—It is for the purpose of illustrating a matter that the witness is now testifying to, as to variation, preparing estimates.

Mr. ALLEN.—Your Honor, I submit that a requisition of August 19, 1910, is too remote in point of time to afford any light to the jury on the question of what might be the condition in 1908. [867—815]

Q. Mr. Meyer, what is the fact, in your experience in the Storekeeper's office, or from your experience in the Storekeeper's office, as to whether or not the estimated prices which was placed in the requisition, was followed by or controlled the paymaster in the Navy Pay Office in Seattle, in the price for which he purchased the article requisitioned for?

A. Why, the regulations—

Q. I am asking now as to what the facts were?

A. The facts were, he purchased them, after competition from the lowest satisfactory bidder, irrespective of the estimated cost of the articles.

Q. And, in acting in the discharge of his duties in purchasing the goods, state whether or not from your knowledge of the transaction, whether or not the goods were, in fact, purchased for the same, or less than the amount, included in the estimate.

A. Goods were invariably purchased for less than the estimate.

Q. Now, can you state to the jury generally about what percentage of variation is shown in the different folders, about how it ran, to what extremes the variation?

Mr. ALLEN.—I object to that as incompetent, ir-

(Testimony of Edwin F. Meyer.)

relevant and immaterial. He has not qualified himself here as a bookkeeping expert.

By the COURT.—OBJECTION SUSTAINED: EXCEPTION ALLOWED.

Q. I wish to hand the witness four Government folders and ask him to state what they are, if he knows?

By the COURT.—Have these been identified?

Mr. SHIPLEY.—Not as yet. We will offer them as one.

A. They are Defendant's Exhibit "Q," "T," "S" and "U."

Mr. MORRIS.—They are in evidence; they are "Q," "T," "S" and "U."

Mr. SHIPLEY.—In evidence in this case? [868—816]

A. In evidence in this case, and they are contracts with Richard B. Sherman, J. B. Kendle Company and Western Hardware & Metal Company, for bolts and nuts.

Q. Now, explain to the jury what bearing those matters have upon the question of variation, which is now under inquiry?

Mr. SHIPLEY.—We at this time offer these four folders, which have been previously identified as Defendant's Exhibits "U," "T," "S" and "Q," as evidence in this case.

(Further argument by counsel.)

By the COURT.—I have my mind fixed that these should be admitted. It is for the jury to say whether there is any, or what weight should be given to these,

(Testimony of Edwin F. Meyer.)

from the testimony that is presented, and I believe it would be error to not permit it, under the testimony as it is before the Court. OBJECTION OVER-
RULED; EXCEPTION ALLOWED.

(Whereupon Defendant's Exhibits "Q," "T," "S" and "U," for Identification, are admitted in evidence.)

Q. Showing the witness Defendant's Exhibit "T," the matters contained in that folder, are they the same as involved in any of these other four?

A. Practically. They are bolts and nuts, standard article.

Q. That folder that you have is separate from this, separate transactions? A. They are separate.

Q. You may proceed and explain to the jury what you mean by variation in price and cost and selling price and estimate.

A. This is a requisition for bolts and nuts, that was sent to the Bureau at Washington, to be advertised. The Bureau, after receipt of that requisition, sent out these printed proposals, advertising the purchase of a number of items of bolts and nuts, [869—817] navy standard. They placed an award subsequent to the receipt of those proposals, for the standard bolts and nuts, at prices varying from four and three-tenths cents, to seven and eight cents, according to the size. Smaller sizes would be eight cents, and larger sizes would be four and three-tenths cents. At the same period we wanted some bolts and nuts at the navy yard for earlier delivery. We have two or three requisitions here—

(Testimony of Edwin F. Meyer.)

Q. I am asking the witness to explain what he meant by the difficulty in arriving at estimates, based upon the variation in prices, which he is doing. His answer is responsive to the question.

A. The first contract, in the Storekeeper's office, we wanted bolts and nuts for delivery at the yard for an exigency, that is, for some of the ships there. We knew that these prices were in existence, four and three-tenths cents, but we wanted local delivery. After telegraphing San Francisco, Portland and dealers in Seattle for prices, that is, writing them a letter and asking them to quote us prices by wire, I was forced to submit a requisition for the same articles, under the same specification and make the estimate fourteen cents, whereas the same material was purchased for in the neighborhood of five and six-tenths cents for eastern delivery.

By a JUROR.—That was a case where you purchased these nuts at fourteen cents a pound, where you have got to have them in Seattle, and you were willing to pay fourteen cents a pound instead of four, in order to get them?

A. In order to get them, yes, sir. The early delivery was the item.

Q. That is a transaction in which there was an exigency and the Government needed the nuts and bought them, paying that price, although they could have been purchased, and had been [870—818] purchased, at a lower price?

A. Yes, but the delivery in this case was 120 days. We couldn't wait that long for the material. The

(Testimony of Edwin F. Meyer.)

ships were there, waiting for the completion of this work.

Q. Was there any charge or question of fraud in connection with that transaction?

A. Not that I am aware of, sir.

Q. Who was the trader or the concern from which that purchase was made?

A. This was the contract, made from Richard B. Sherman. That is a New York concern, but the local purchase was made in one instance from Baker & Hamilton, San Francisco.

Q. The matters you are testifying to are with your personal knowledge?

A. My personal knowledge, yes, sir.

Q. I call your attention to Defendants' Exhibit "Q," I think that is.

A. These all relate to the same thing, bolts and nuts. They are just under the same circumstances.

Q. These four exhibits that have been just offered, relate to the same character of transaction, in regard to the same subject matter of bolts and nuts?

A. Bolts and nuts, yes.

Q. Handing you Plaintiff's Exhibit 69, I will ask you to examine the contents of that folder, and tell the jury what the facts are that are disclosed, bearing on the same subject matter.

A. This isn't the 169 in question. This is 169 of 1907. The other 169 is 2/12/10.

Q. That is the wrong year?

A. Yes, sir. that is the wrong year. [871—819]

Mr. MORRIS.—Mr. House, can you furnish us

(Testimony of Edwin F. Meyer.)

with folder 169, 2d of February, 1910?

Mr. HOUSE.—Did you ask me for it before noon?

A. Yes, sir. They may be introduced here, I don't remember. This pertains to zinc.

Mr. MORRIS.—Those are the folders we called for, are they not?

A. 169, whatever date it is there. This is not the folder we called for. The memorandum there gives the date of the requisition.

Mr. MORRIS.—The 12th of February, 1910, bolts and nuts.

A. Bolts and nuts. That requisition 153 is in evidence, that is it has been introduced.

Q. In the preparation of these specifications, and in the insertion of the estimated price, what were the facts in regard to—say this is the early part of 1908—to your having at hand at that time, data in the office, showing previous purchases?

Mr. ALLEN.—I submit they went over that very carefully. I don't see why it should be repeated at this particular moment.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. Why, at that period, it was exceedingly difficult to trace an article back, except by reference to the bookkeeper's records. We established what we called a card index system, of recording material, after that time, after I took up—

Q. When was that established with reference to April 1, 1908?

A. Not until after I gave most of my attention to

(Testimony of Edwin F. Meyer.)

the requisition work. It was after Mr. Barnes' arrival at the navy yard.

Q. And prior to that time, state to the jury what the facts are in regard to confusion existing there, or not?

A. Well, it was exceedingly difficult to trace an article back, because of the absence of that card index system. The Storekeeper's [872—820] work grew to great proportions, in a very short time, and without clerks, as Mr. Spear said, it was necessary to keep a great deal of this in my head. We hadn't sufficient clerks to keep the record, and it was chiefly done by myself, by notes made at various places.

Q. And that was because of doing a vast amount of business shorthanded?

A. With very few men to do it, yes, sir.

Q. Now, what is meant by the expression, "term of delivery," which has been referred to several times?

A. That is the time of delivery. That is the date that is stated in the requisition that the material would be required. That is the date we would like to have the material.

Q. What determined that fact?

A. The need of the articles, that is the condition of stock, or the request from the ship.

Q. And by whom was the question of time determined, by what person?

A. In case the requisitions were prepared in the yard departments, they were determined by those officers. In case they were prepared in my office,

(Testimony of Edwin F. Meyer.)

they were determined by me or by the Storekeeper, he would direct me to do it. I had some discretion in the matter.

Q. Did the time that was prescribed in the requisition for delivery, was that binding upon the Paymaster?

A. No, sir, not altogether, it was not binding in any way. The purchasing pay officer exercised his discretion. He tried to get the material on time, but if he could not, he would purchase it at the shortest delivery he could.

Q. By whom were the specifications which you mentioned at several [873—821] times, by whom were they prepared?

A. In the Bureau at Washington, or by the technical officers at the navy yard.

Q. Going back to the matter of time of delivery, with reference to the ship's requisitions, how was that determined?

A. Well, a ship requisition would indicate on its face just when the article would be required by the vessel. They were usually in a hurry. We tried to get it for them as soon as possible.

Q. And to what extent, if any, did the condition of the stock in the yard influence the fixing of the time?

A. A very great extent. We would determine by the issues, or the probable issues, just how much of the material would be required, and we would base our requisitions accordingly. If we had plenty of time, we would submit a requisition to the Bureau,

(Testimony of Edwin F. Meyer.)

ask them to advertise—not ask them to, but on such a form that they would advertise it. If they wanted material for early needs, they would issue a requisition and ask the purchase of it in the open market, the idea being to always have the material there when called for.

Q. And to what extent, if any, did the knowledge of future requirements to meet the demands of ships that were expected, influence you in determining the time for delivery?

A. Well, that was the governing feature, the controlling feature.

Q. What do you mean when you say that was the controlling feature?

A. Well, the knowledge that material would be required caused us to put into operation these requisitions, to meet these probable demands.

Q. Now, you say you had to be prepared to meet these future requirements. Did you always act upon absolute information, or [874—822] were you required to anticipate and speculate on the amounts, on both the time and the amount which would be required?

By the COURT.—State on what you did act.

A. Well, the ships made it a habit, they visited the navy yard during the spring and fall, as a rule. Prior to the arrival there of those ships—I am referring particularly to the Pacific Fleet—we endeavored to build up our stock, to have on hand, about the time of their arrivals there, a large quantity of supplies, larger than any other time.

(Testimony of Edwin F. Meyer.)

Q. What period are you referring to?

A. We started this in the spring of 1908, and we requisitioned for material in order to have it there while these ships were there in 1908, and that procedure was carried out up until the time of my separation from the service.

Q. (By Mr. MORRIS.) Don't you mean 1907?

A. No; 1908.

Mr. MORRIS.—You are speaking of battleships?

A. Cruisers.

Q. You say they were expected ordinarily in the fore part of the year?

A. In the fore part of the year; they were over in the fore part of the year 1908.

Q. State what the facts are as to whether they would return at different times throughout the year.

A. They came in the spring, and usually in the fall, and at that period they would submit their semi-annual requisitions. These requisitions were submitted from the various departments, calling for their allowance for supplies.

Q. Allowance for what period?

A. Six months period. [875—823]

Q. And in fixing the time of the delivery, what bearing did the arrival of the ships have on that?

A. Well, we figured about the time they were due there, and we wanted to have the material on hand prior to their arrival, in sufficient time so as to have it inspected and stored, so as to be able to send it to them upon their requisitions.

Q. What, if anything, would have been the result

(Testimony of Edwin F. Meyer.)

of a failure to have it there at that time?

A. I would usually be called to account for it, why the store is not here, or why isn't this item here for the ship.

Q. What effect did that have as to delaying the ships?

A. I know that, yes, sir. Zincs are required for boilers of vessels; they cannot move without them.

(Question read.)

A. Well, there are certain items of ship's allowance that they don't leave the navy yard without, and zinc would be one of them.

Q. By whom are the purchases made under these requisitions? A. The Purchasing Pay Officer.

Q. Explain to the jury.

A. Well, the Navy Department has established purchasing pay officers in the various cities adjacent to the leading navy yards in the countries, and these offices are in the charge of a pay officer, who has charge. He makes all purchases. That is separate and distinct from the Storekeeper's office.

Q. Did either the Storekeeper, or anyone connected with his office, at the Bremerton station, have anything to do with the sending out of proposals asking for bids? A. No, sir.

Q. Did they have anything to do with accepting awards?

A. No, sir. He was called upon occasionally to make a recommendation, [876—824] or something, a discrepancy in the specifications.

Q. Now, when the Purchasing Pay Officer made

(Testimony of Edwin F. Meyer.)

the awards, was there any notification sent to the Storekeeper's office?

A. A copy was sent over to the Storekeeper's office, showing to whom the award was made, the price at which it was made, and when the material was supposed to be delivered, in order that the Storekeeper's office might have the information, when he might expect the supplies, and from whom and the cost at which the purchase was made.

Q. And those facts were certified by the Paymaster? A. Yes, sir, they usually bore his initials.

Q. In that connection, during the time of your connection with the Storekeeper's office at the Bremerton station, did you personally have anything to do with the sending out of proposals, acceptance of awards, making of contracts, or any action in regard to the purchasing of the supplies that were requisitioned for? A. No, sir.

Mr. ALLEN.—I submit that is repetition of matters gone over.

By the COURT.—I thought that had been gone over. He has already answered. Proceed.

Q. Did you ever, at any time, have any understanding or agreement with Mr. Kettlewell, in the purchasing office, or the Navy Pay Office, in Seattle, in regard to the award of contracts, accepting of bids, or the purchasing of goods in that office?

A. No, sir.

Q. The requisitions for open purchase are those the requisitions that require the approval of the Secretary of the Navy?

(Testimony of Edwin F. Meyer.)

A. Over \$500. Requisitions on which the estimate is over \$500, requires the approval of the Secretary of the Navy, that is, if purchase is to be made, what we call open purchase, without [877—825] advertisement.

Q. Was the requisition under which the zinc, fifty thousand pounds was purchased, that is described in the indictment—

A. That is an open purchase requisition.

Mr. SCHLESINGER.—We would like to put Mr. Smith on the stand out of order, with the consent of Mr. Morris.

The COURT.—Very well.

[Testimony of Herbert E. Smith, for Defendants.]

HERBERT E. SMITH, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. SCHLESINGER.)

Q. Your name is? A. Herbert E. Smith.

Q. Where do you live, Mr. Smith? A. Seattle.

Q. What is your vocation, Mr. Smith?

A. Certified public *account*.

Q. What is the name of your firm?

A. Smith, Robertson & Moorhouse.

Q. Have you ever testified in court in cases involving complicated accounts? A. I have.

Q. Have you ever testified in cases in court in cases involving bookkeeping? A. I have.

Mr. SCHLESINGER.—Do you question the competency of Mr. Smith? [878—826]

(Testimony of Herbert E. Smith.)

Mr. ALLEN.—Mr. House, do you know anything about him?

Mr. HOUSE.—No.

Mr. ALLEN.—Ask him. I don't know, as a matter of fact, Mr. Schlesinger.

Q. How long have you been here in the county?

A. Six years in Seattle.

Q. Public accountant? A. Yes, sir.

Mr. SCHLESINGER.—Mr. Smith, have you, at my request, within the last week, made an examination of a sales ledger of the Great Western Smelting & Refining Company?

A. I have examined the account of the United States Government on the ledger of the Great Western Smelting & Refining Company.

Q. For the purpose of making that examination from whom did you obtain the ledger?

A. Mr. House.

Q. Have you examined that ledger for the purpose of showing the cash payment by the Government for navy yard purchases from September, 1907, down to July 20th, 1910? A. I have.

Q. Have you taken off of that ledger those various items of cash payment by the Government from this Navy Pay Office? A. I have.

Q. Will you please give me the first item therein regularly appearing? May he use this for convenience sake, Mr. Allen?

Mr. ALLEN.—Go ahead; I will use this as a copy.

A. September 19, 1907, \$207.83.

(Testimony of Herbert E. Smith.)

Mr. ALLEN.—Just a moment. This purports to be, according to the statement on top, on the left-hand side, cash payments by the Government for navy yard purchases credited on the [879—827] ledger account of the Great Western Smelting & Refining Company. Mr. Smith, does that statement purport to include in the statement payments made to any of the subsidiary concerns of the Great Western, pointing out to your attention the account of the Fowler Metal Company?

A. No, this is taken from the account of the Great Western Smelting & Refining Company's books of the Government, the account with the Government.

Mr. ALLEN.—And if a purchase was made, or sale made, to the Fowler Metal Company, and the money went through the coffers of the Great Western, it wouldn't show here; isn't that true?

A. If it had been charged on the book, if it had been charged to the Government.

Mr. ALLEN.—Do you find on this statement any item of \$7,417? A. No.

Mr. ALLEN.—The Fowler Metal Company purchase which they say was a subsidiary concern?

A. No.

Mr. ALLEN.—That wouldn't show there, would it?

A. It only shows the case received for purchases which were charged to the Government in that account which I saw.

Mr. ALLEN.—It came directly, then, to the Great Western. If it came through the intermediary of

(Testimony of Herbert E. Smith.)

the Fowler Metal Company it wouldn't show on there.

A. If it hadn't been charged to that account.

Mr. ALLEN.—You don't find an item for \$7,417.09, do you? A. No.

Mr. ALLEN.—It isn't on there, as a matter of fact, is it? A. No.

Mr. SCHLESINGER.—You don't claim they got it, do you? [880—828]

Mr. ALLEN.—Yes, I do.

Mr. SCHLESINGER.—No, the records show they got one-half of it. We will explain that later on.

Q. What is the first item?

A. 1907, September 19th, item 207.83.

Q. And what is the second item?

A. November 25th, \$77.42.

Q. Your next? A. November 25th, \$1,212.26.

Q. Next?

A. December 19, \$600.25; January 11, 1908, \$1,324.46.

Q. Next?

A. January 30th, \$525; January 30th, \$640; February 6th, \$525; March 14, \$364.80; April 13, \$479.33; April 13, \$241.62; April 16, \$471.24; April 25th, \$1,810.82.

Q. Does that close the year 1908?

A. No, there are more items in 1908 below.

Q. Next? A. May 12th, \$469.04.

Q. Next?

A. June 30th, \$243.20; July 7, \$2,747.29; July 11th, \$152.25; August 3d, \$1,450.93; August 5th, \$282.15;

(Testimony of Herbert E. Smith.)

August 27th, \$302.45; August 31st, \$467.50; September 5th, \$459.90; September 24th, \$281.13; November 14, \$521. 1909: January 18, \$484.10; June 29th, \$134.55; July 24th, \$249.14; August 7th, \$65; October 13th, \$397.50. The year 1910: March 8th, \$339.90; March 23d, \$264.25; March 29th, \$281; March 30th, \$719.20; April 29th, \$497.20; May 2d, \$68.88; July 20th, \$46.86.

Q. And that concludes the account, does it?
881—829] A. Yes, sir.

Q. I will ask you whether you have examined what has been termed here the bonus account of Emar Goldberg covering the same period of time?

A. I have.

Q. And have you taken from that so-called bonus account the items therein appearing during that period? A. The cash charges to that account.

Q. That is, the cash withdrawals, you mean?

A. Yes.

Q. Will you kindly read those items?

A. 1908—

Mr. ALLEN.—I understand the witness now is testifying that this is a recapitulation of the ledger?

A. Yes, sir.

Mr. ALLEN.—All right, go ahead.

A. 1908: April 27, \$30.

Q. Now, I wish you to pause here. April 27, \$30. Will you give me the date and item nearest that in point of time appearing upon the ledger account?

A. 1908: April 27, \$30; April 27, \$500; May 4th, \$160; May 18th, \$336; May 29, \$200; June 1st, \$500;

(Testimony of Herbert E. Smith.)

June 1st, \$210; June 29th, \$25; September 24th, \$150,—

Mr. ALLEN.—Is that the same year?

A. Yes, sir. November 17, \$126; December 17, \$600. The year 1909: January 22d, \$20; February 27, \$15; March 10th, 10; April 26th, \$18.50; May 4th, \$7; July 24th, \$139; August 19th, \$28; August 21st, \$25; September 24th, \$150. The year 1910: January 8th, \$125; April 21st, \$125; April 22d, \$25; June 28th, \$21.80; July 15th, \$24.95; July 30th, \$15; August [882—830] 12th, \$59.75; September 14th, \$185; October 20th, \$63.50; November 30th, \$210.

Mr. SCHLESINGER.—Now, are those dates absolutely correct, Mr. Smith?

A. According to the records that I have.

Q. And are the items correct according to the records? A. Yes, sir.

Mr. SCHLESINGER.—Your Honor, I will ask to have this marked for identification.

(Paper referred to marked Defendants' Exhibit "A-103" for identification.)

Mr. ALLEN.—Is this the original, Mr. Schlesinger?

Mr. SCHLESINGER.—This is a duplicate original.

Mr. ALLEN.—Which one do you want offered in evidence?

Mr. SCHLESINGER.—I want this one marked here. Take the witness.

(Testimony of Herbert E. Smith.)

On cross-examination by Mr. ALLEN the said witness testified as follows:

Q. Mr. Smith, if the Great Western Smelting & Refining Company were doing business with the United States Government through other names, or other concerns, so-called subsidiary concerns, in the year 1908, the business done by that subsidiary concern would not appear on this statement, isn't that true?

A. Well, I am not familiar with all the accounts of the Great Western Smelting & Refining Company.

Q. Read that question to him. He may not understand the purport of it.

A. I think I understand it, Mr. Allen.

Q. Well, go ahead and answer the question, then.

A. Well, I say, that I have only seen this one account, and unless [883—831] the purchase had been charged to the Government on that one account this would not have been a receipt.

Q. This would not have those receipts. When they were doing business in the name of the Fowler Metal Company, a subsidiary concern, that would and does not appear on this statement; isn't that true? A. Yes.

Q. It was purchased and sold to the United States Government, in the name of the Fowler Metal Company, a full ton, or full car of zinc, 25 tons or thereabouts, on or about the month of April, 1908, and they received therefor, in the name of the Fowler Metal Company, the sum of \$7,417.09, that would not appear and does not appear on that account; isn't

(Testimony of Herbert E. Smith.)

that correct? A. That amount does not appear.

Q. You don't know how many, and in how many, or in the names of how many concerns the Great Western was then doing business with the United States Government, do you? A. No, sir.

Q. You are simply taking those amounts where the business is done directly in its own name; is that true?

A. Where it sent through that one particular account on their ledger.

Q. Yes, sir. And you don't know anything about their connection with the Fowler Metal Company?

A. Yes.

Mr. ALLEN.—We object to this only for this reason, under the statement of the witness himself he shows it is not an accurate account of the business done by the Great Western with the United States Government, and under the statement of counsel.

The COURT.—It is simply stated this is the account of the [884—832] Great Western only.

Mr. ALLEN.—Then I will not object to that.

(Paper referred to received in evidence and marked Defendants' Exhibit "A-103.")

Mr. ALLEN.—Mr. Riddell calls my attention to this:

Q. You copied off the half of one exhibit in this case and half of the other, haven't you?

A. Well, it is not exactly that, Mr. Allen.

Q. But practically so in effect that?

A. It is, yes. The first column represents the cash that was credited to the Government's account

(Testimony of Herbert E. Smith.)

on the ledger of the Great Western Smelting & Refining Company for purchases where the payment came from the Bremerton navy yard.

Q. Direct?

A. As nearly as I could determine with Mr. House's system.

Q. As nearly as you could determine. From what sheet did you obtain these items?

A. Those are from the ledger account of the Government on the Great Western Smelting & Refining Company's books.

Q. Can you pick out for the sheet from which you obtained those items?

A. If you will hand me their account I can show it to you.

Q. Step down here.

Mr. RIDDELL.—Where do you start?

A. I start right here (showing).

Mr. ALLEN.—You didn't include, then, the cash which came through purchases made at Washington, is that right?

A. Yes.

Q. By an instruction from counsel on the other side you omitted those items, is that right? [885—

833] A. I did.

Mr. SCHLESINGER.—By instruction of counsel and by consent of your associate counsel, Mr. House.

On redirect examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Mr. Smith, have you likewise examined for me

(Testimony of Herbert E. Smith.)

a large number of folders in this building?

A. I have examined a number, yes, sir.

Q. From whom did you get such folders?

A. Mr. House.

Q. Did you hear me ask Mr. House to select folders at random of any late year to give you for the purposes of examination? A. Yes, sir.

Q. Did he thereupon go through *one* numerous cases in the adjoining office and take therefrom certain folders? A. He did.

Q. And have you examined those folders?

A. I have.

Q. For what purpose did you make such examination?

A. To compare the prices on the bids from the various bidders on different Government contracts.

Q. For the purpose of ascertaining the price over and above the original requisition or Government estimate, was that one of your purposes?

A. In some of them I did that.

Q. And was it another purpose to ascertain the difference between the lowest and the highest bid where there were several bids interposed? [886—834] A. Yes, sir.

Q. And was it the purpose of obtaining the percentage in excess of the actual award?

A. Yes, sir.

Q. Did you or did you not, without going into details, find any variations between the lowest and highest bids? A. I did.

[**Testimony of Edwin F. Meyer, for Defendants
(Recalled).**]

EDWIN F. MEYER on the stand, direct examination (resumed).

(Mr. SHIPLEY.)

Q. Mr. Meyer, handing you a folder marked Defendants' Exhibit "A-16"—Mr. Clerk, has that been introduced in evidence, or merely for identification?

The COURT.—It is not introduced.

Mr. SHIPLEY.—State what that is, please.

The COURT.—Requisition 207 has been admitted.

A. This is requisition 335.

Mr. SHIPLEY.—That is requisition what?

A. 335.

The CLERK.—No, it has not been admitted.

Mr. SHIPLEY.—State the date of it, please, Mr. Meyer.

A. February 25th, 1908.

Q. To what subject matter does that relate?

A. Purchase of—

Mr. ALLEN.—Just a moment, now. We object to you reading into the record before this jury—

Mr. SHIPLEY.—Merely to show it is admissible is all.

Q. State the subject matter, to what the folder relates? [887—835]

Mr. ALLEN.—All right, ask him the question.

A. Turpentine and bolts and nuts.

Mr. SHIPLEY.—And dated in what month and what year?

(Testimony of Edwin F. Meyer.)

A. February, 1908.

Q. That folder is a record of what office?

A. Storekeeper's office, navy yard.

Q. It was produced into court by whom?

A. We asked they be produced here.

Q. And produced by Mr. House pursuant to your request? A. Yes, sir.

Mr. SHIPLEY.—We will offer this folder in evidence.

Mr. ALLEN.—We object, your Honor, for the reasons set forth yesterday and renewed at this time. Your Honor, this folder and its contents are immaterial, irrelevant and incompetent, that a discussion of any matter connected with it could not afford the jury any possible light. Your Honor knows perfectly well the purpose—

Mr. SHIPLEY.—The only portion of the exhibit we care to put before the jury is the one with reference to bolts and nuts, a purchase made in February, 1908, immediately preceding the preparation of the requisition in this trial.

Mr. ALLEN.—If counsel will assure me they are going to pursue some particular standard article I will not object to their following that line of defense, but if—

The COURT.—Admitted as to bolts and nuts.

(Folder referred to received in evidence and marked Defendants' Exhibit "A-16.")

Mr. SHIPLEY.—Mr. Meyer, calling your attention to the item of bolts and nuts. Explain to the jury the transaction in [888—836] reference thereto?

(Testimony of Edwin F. Meyer.)

A. Well, on this day—

The COURT.—That is, read the exhibit.

Mr. SHIPLEY.—How was that?

The COURT.—You mean to read the exhibit?

Mr. SHIPLEY.—Yes, your Honor, just the portion that relates to the bolts and nuts.

A. This is requisition for item two is 500 pounds of bolts and nuts, hex. the estimated cost on the requisition is 12 cents, 500 pounds. It was purchased from the Washington Steel & Bolt Company at 12 cents per pound.

Q. Where was this firm?

A. Edmonds, Washington.

Q. What was the time of delivery specified in that requisition?

A. The requisition was dated February 25th and delivery was required on or about April 15th.

Q. Who prepared that requisition?

A. Prepared in my office.

Q. Under your supervision?

A. Under my supervision.

Q. Who prepared the estimate?

A. Well, in the same manner that all the estimates were prepared, either—

Mr. SHIPLEY.—Just explain how it was done, Mr. Meyer.

A. It is pretty difficult to tell now who actually put that estimate on. It was done in my office by someone there, either by myself or some of my assistants there.

Q. Under your supervision? A. Yes, sir.

(Testimony of Edwin F. Meyer.)

A. February, 1908.

Q. That folder is a record of what office?

A. Storekeeper's office, navy yard.

Q. It was produced into court by whom?

A. We asked they be produced here.

Q. And produced by Mr. House pursuant to your request? A. Yes, sir.

Mr. SHIPLEY.—We will offer this folder in evidence.

Mr. ALLEN.—We object, your Honor, for the reasons set forth yesterday and renewed at this time. Your Honor, this folder and its contents are immaterial, irrelevant and incompetent, that a discussion of any matter connected with it could not afford the jury any possible light. Your Honor knows perfectly well the purpose—

Mr. SHIPLEY.—The only portion of the exhibit we care to put before the jury is the one with reference to bolts and nuts, a purchase made in February, 1908, immediately preceding the preparation of the requisition in this trial.

Mr. ALLEN.—If counsel will assure me they are going to pursue some particular standard article I will not object to their following that line of defense, but if—

The COURT.—Admitted as to bolts and nuts.

(Folder referred to received in evidence and marked Defendants' Exhibit "A-16.")

Mr. SHIPLEY.—Mr. Meyer, calling your attention to the item of bolts and nuts. Explain to the jury the transaction in [888—836] reference thereto?

(Testimony of Edwin F. Meyer.)

A. Well, on this day—

The COURT.—That is, read the exhibit.

Mr. SHIPLEY.—How was that?

The COURT.—You mean to read the exhibit?

Mr. SHIPLEY.—Yes, your Honor, just the portion that relates to the bolts and nuts.

A. This is requisition for item two is 500 pounds of bolts and nuts, hex. the estimated cost on the requisition is 12 cents, 500 pounds. It was purchased from the Washington Steel & Bolt Company at 12 cents per pound.

Q. Where was this firm?

A. Edmonds, Washington.

Q. What was the time of delivery specified in that requisition?

A. The requisition was dated February 25th and delivery was required on or about April 15th.

Q. Who prepared that requisition?

A. Prepared in my office.

Q. Under your supervision?

A. Under my supervision.

Q. Who prepared the estimate?

A. Well, in the same manner that all the estimates were prepared, either—

Mr. SHIPLEY.—Just explain how it was done, Mr. Meyer.

A. It is pretty difficult to tell now who actually put that estimate on. It was done in my office by someone there, either by myself or some of my assistants there.

Q. Under your supervision? A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. Who was responsible for that estimate? [889—837] A. I was, sir.

Q. From what source was knowledge obtainable at that time in regard to the price of bolts and nuts?

A. Previous purchases from dealers, knowledge of the cost of articles, general knowledge.

Q. Any additional explanation you wish to make of that transaction? A. No, sir.

Q. State whether or not this is the same class of articles for which you testified yesterday that the eastern price was five cents?

Mr. ALLEN.—I object to that as being leading. If this witness wants to state—

Mr. SHIPLEY.—From the different styles, different shapes of bolts and nuts. Now, the question is whether these conformed to the specifications included in the requisition concerning which he testified last evening.

Mr. ALLEN.—If this witness wants to state, your Honor, that he knew this number purchased in the east to be five cents and he placed an estimate of 12 cents on here I have no objection, but I don't think he ought to make comparison unless he states of his own knowledge.

The COURT.—Objection withdrawn.

Mr. ALLEN.—I make the objection for that reason, as incompetent, immaterial and irrelevant, as to what his judgment might be as to the eastern market, unless he has some—

The COURT.—Sustained.

Mr. SHIPLEY.—Note an exception. I am not

(Testimony of Edwin F. Meyer.)

asking him that, I am simply asking him if the specifications calling for these bolts and nuts is the same and requires the same character of [890—838] supplies as did the requisitions concerning which he testified last night, which he certainly must know. There might be a difference in character, description and quality of material.

Q. Are the bolts and nuts called for by this requisition a stock article? A. Yes, sir.

Q. Standard? A. Standard, yes, sir.

Q. Are they called for under the same specifications with the other requisitions?

A. Approximately the same. I have to compare them. The general specifications are the same.

Q. In the case of specifications for bolts and nuts, who would prepare the specifications?

A. They were prepared in the Department at Washington, in the Bureau.

Q. Did the Storekeeper's office have anything to do with that matter? A. No, sir.

Q. What do you mean by the specifications? Counsel wants to know if you refer to the printed part?

A. The printed part, yes, sir, the specifications which are drawn up at length at Washington; we merely refer to those specifications by number.

Q. Were the specifications inserted in exhibit "J" prepared in Washington?

A. I will have to see the exhibit, Mr. Shipley.

The COURT.—That is the same one you had.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—Yes. That was the old number, “A-16” (handing same to witness). [891—839]

A. Yes, sir, about in accordance with the specifications 5-B-4, that is Bureau specifications.

Q. Mr. Meyer, calling your attention to Plaintiff’s Exhibit “9,” regulations of 1905, I will ask you to turn to page 293, subdivision of section 6, and read to the jury the portion of that regulation that applies to certificate of the Purchasing Pay Office with reference to prices.

Mr. ALLEN.—Are you going to offer that section in evidence?

Mr. SHIPLEY.—Yes. The whole book is in evidence, isn’t it?

Mr. ALLEN.—I didn’t understand so. I read my sections in.

Mr. SHIPLEY.—Very well, then we will offer that particular subdivision and have it read. Read it to the jury.

A. “Section 6: The Purchasing Pay Officer shall, except in the case of Navy Pay Office contracts, certify on all dealers’ bills for orders placed by him, that he purchased of articles thereon or employed the services without public competition; that the prices charged, amounting in all to blank dollars and blank cents, are correct and reasonable and the lowest market rates at which the articles or service could be obtained; and such bills shall be attached to and made a part of the first of the voucher prepared by the General Storekeeper.”

Q. Mr. Meyer, in the performance of your duties

(Testimony of Edwin F. Meyer.)

at the Storekeeper's office at the Bremerton station, did you have anything to do with the preparation or the making of such certificate?

A. No, sir, that was a certificate of the Pay Officer.

Q. Did you have anything of these transactions that have been introduced in evidence before this jury, have any connection or anything to do with any such certificate? A. No, sir.

Q. That exhibit "9" you hold in your hand?
[892—840]

A. "9," yes, sir.

Q. Turn to page 290 and read therefrom into the record the regulation in regard to inspection, which we offer in evidence.

A. "Article 1327: When supplies are received General Storekeepers shall immediately call an inspection of them, and it shall be the duty of Commandants to see that Boards of Inspection pass upon them without delay."

"Article 1326: For the inspection of supplies submitted for delivery there shall be at all navy yards and stations a Board of three officers to be appointed by the Commandant, two as permanent members and the other as a representative of the Bureau to which the supplies to be inspected pertain. At inspections of this Board a representative of the General Storekeeper shall be detailed by him, who shall give any information pertinent to the inspection in question that may be desired by the Board, and shall bring to the attention of the Board any facts that may bear

(Testimony of Edwin F. Meyer.)

upon the protection of the public interests.”

Q. Mr. Meyer, in the indictment in this case you are charged with causing articles delivered to be inspected and accepted. State to this jury whether or not you had anything to do, or any power over, the inspection of goods or supplies delivered at the Bremerton Navy Yard.

A. Absolutely nothing, sir; that was a function of the Board.

Q. These officials who composed this Board, what was their relation to you in rank?

A. Well, they were officers of the navy; I was a clerk, an employee, an inferior.

Q. State to the jury whether or not officials of that rank would have brooked any interference or suggestion from you, a mere clerk. [893—841]

A. Why, they have considered suggestions.

Q. I mean as to the matter in which they performed their duty. A. No, sir; no, sir.

Q. What was the custom and what was done in the particular case now under investigation in regard to stock being inspected before it is taken into the stock of the navy yard?

A. Well, no stock is taken, no material is taken into stock until after it is inspected.

Q. What do you mean by Inspection Calls? State to the jury so they will understand.

A. An Inspection Call is a paper prepared by the Inspection Call Clerk in the Storekeeper's office that is sent to the Board of Inspection, which shows on the face of it all the facts that they need for the in-

(Testimony of Edwin F. Meyer.)

spection of the articles. After the inspection—

Q. Now, was the particular transaction, as covered or involved under requisition 438, handled in the same manner, or was there some exception made in that case?

A. It was handled in the same manner, as far as I know, sir.

Q. What was the relative position of this Inspection Call Clerk to the General Storekeeper?

A. He was a clerk in the office of the requisition section; he was an employee.

Q. And at what stage of the proceeding was his action set in motion?

A. After the delivery of the goods. The delivery was supposed to be accompanied by a memorandum or an invoice from the dealer. Immediately on receipt of the goods on the navy yard the receiver of the yard would report to the Inspection Call Clerk the [894—842] arrival of these goods. He thereupon would prepare this call for inspection, or put in motion these papers.

Q. Well, how was that put in motion, what was done?

A. Well, he drew up the record number of inspection calls, detailing the information that they would require for the purposes of inspection.

Q. Who was required—

A. The Inspection Call Clerk would do this, that the Board of Inspection would require, and would forward these papers to the Board of Inspection.

Q. And did his duties cease at that point?

(Testimony of Edwin F. Meyer.)

A. At that point, yes, sir.

Q. And then the duties of the Inspection Board, covered by the regulation which you have just read to the jury, were set in motion?

A. Upon the receipt by them of these papers.

Q. Did this Inspection Call require the signature of the General Storekeeper?

A. He did sign them, yes, sir.

Q. Then after the Board had made its inspection what was done?

A. The Board would report its findings first to the storekeeper and then to the Bureau in the weekly report.

Q. What bureau?

A. Bureau of Supplies and Accounts.

Q. At Washington, D. C.?

A. At Washington, yes, sir.

Q. Was this made out with two copies?

A. Well, its report to the Bureau would be on another form. There were usually three copies of the Inspection Call made. [895—843] One copy, or two copies, were returned to the storekeeper and one copy returned in the report.

Q. Two copies that were returned to the storekeeper. What became of those?

A. One copy was sent out to the storeman handling the material and the other copy filed in these folders we kept in the office there.

Q. Now, who made the report to the Bureau at Washington, D. C.?

A. The Board of Inspection. They maintained—

(Testimony of Edwin F. Meyer.)

Q. Did they go directly from the Board?

A. Yes, sir, we had nothing to do with that.

Q. Did they pass under your supervision or under your control? A. No, sir.

Q. In any manner whatever?

A. The Board of Inspection maintain what is known as an office, the Board of Inspection office and it kept one or two clerks there. It was their duty to prepare these matters for the Board.

Q. And their report, then, went directly to the Bureau at Washington? A. Yes, sir.

Q. Did you ever at any time have anything to do with the inspection of stock or material, personally, I mean? A. No, sir.

Q. I wish you would turn to the same exhibit "9," navy regulations of 1905, and read article 1333. What page is that? A. 292.

Q. Read out loud, please, Mr. Meyer.

A. "The General Storekeeper is responsible for the correctness of prices and of the computations in any voucher for supplies [896—844] accepted; but if any other officer should be cognizant of any error he shall at once draw the attention of the Commandant to the matter."

Q. That is all of that applicable to that subject, is it, Mr. Meyer? A. Yes, sir.

Q. Is the regulation on that same page with reference to the storekeeper being responsible for inspection?

A. "The Board of Inspection shall keep a record of its work—"

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—What are you reading now?

A. Article 1335. “The Board of Inspection shall keep a record of its work, showing date of inspection, articles inspected, and acceptance or rejection, noting the cause, if the latter. The inspection must, in all cases, be thorough and must be made personally by the Board.”

Mr. SHIPLEY.—I will ask you this question, Mr. Meyer, whether at any time, in any of these matters under investigation before this jury, you ever, in any manner, attempted to influence, control or in any manner effect the result of the inspection by the Inspection Board? A. No, sir, I could not if I tried.

Q. Did you ever at any time have any agreement, enter into any scheme or any conspiracy or combination with Mr. Kettlewell or Mr. Goldberg or Mr. Corder, or any one or more of them, to influence in any manner the inspection, rejection or acceptance by the Inspection Board of articles that were delivered at the Puget Sound Navy Yard? A. No, sir.

Q. Mr. Meyer, what is meant by public bill?

A. That is a paper that is prepared in the office of the General [897—845] Storekeeper showing the acceptance of the material, the price paid, in order that payment may be made for the delivery.

Q. It was prepared by whom?

A. What we call a Public Bill Clerk in the requisition office.

Q. This clerk was under your jurisdiction?

A. General supervision, yes, sir; not immediately, but he was in the office.

(Testimony of Edwin F. Meyer.)

Q. He was in the office?

A. He received the report of the Board of Inspection, and if the material passed inspection he would prepare these papers in order that payment may be made.

Q. I call your attention to Plaintiff's Exhibit "10," section 113, under the general head of "Public voucher, money voucher," and ask you to read that.

Mr. ALLEN.—Mr. Shipley, I have called your attention several times—I submit, your Honor, unless he wants me to go over this, to read it himself to the jury.

Mr. SHIPLEY.—"Section 113: When supplies or services furnished to the Navy are to be paid for, a 'public bill' is prepared from the commercial bill submitted by the merchant, dealer or contractor. The public bill really does not become a complete 'voucher,' except as to the receipt of purchased stores, until money is paid out under it and a receipt for the money is obtained on it. It then becomes a money voucher in the accounts of the disbursing officer who pays the bill. But the terms public bill and voucher are used indiscriminately in General Storekeeper's work to signify the same thing—the public bill at any stage of incompleteness. On all public bills for supplies bought in the open market must be a certificate of inspection, by the senior member of the Board of Inspection; [898—846] A certificate of price and purchase, by the Purchasing Pay Officer; and a certificate of receipt, by the General Storekeeper. On public bills for supplies bought under written con-

(Testimony of Edwin F. Meyer.)

tract must be a certificate of inspection by the senior member of the Board of Inspection and a certificate of receipt, by the General Storekeeper. In the case of open contract service, the certificate of price and procurement by the Purchasing Pay Officer, and a certificate of receipt by the General Storekeeper must appear on the public bill. Public bills are prepared in triplicate (with an extra copy, not forwarded, for the files of the class ledger bookkeeper), and but one copy, the 'first' bears the necessary signatures to the certificate, approval, etc. When completed as to certificates, the General Storekeeper forwards them to the Commandant, who approves and forwards them to the Paymaster General. This latter officer approves and directs payment at the most convenient Navy Pay Office. Each public bill for supplies acts as a receipt voucher in the accounts of the class ledger bookkeeper, being posted in the bill book and appearing in the abstract of receipted vouchers forwarded with the quarterly balance sheets (the stock ledgers are posted from Inspection Calls, before public bills are prepared). No copies of public bills are forwarded with the balance sheets to the Bureau of Supplies and Accounts, the Bureau having retained the 'Third' of each one at the time of approving it. Reservation vouchers (form 75) are prepared upon the completion of a written contract and comprise the aggregate of the ten per cent reservations of all previous public bills prepared under the contract. Of course, when a contract is settled completely by one public bill no reservation of ten per

(Testimony of Edwin F. Meyer.)

cent is made, and no reservation voucher is necessary.”

Q. Mr. Meyer, in your office was there a clerk designated public [899—847] bill clerk?

A. Yes, sir.

Q. And did he perform the functions or duties that fell to the storekeeper to prepare that has been designated in the regulation just read? A. Yes, sir.

Q. Did the work performed by the public bill clerk pass under your supervision or inspection, did you see it? A. Yes, sir.

Q. Where did they go after that?

A. Well, they came from his desk to my desk for—that is, in order that I might see it was in proper form, nothing was left off of that that should have been put on, and from my desk taken into the Storekeeper’s office for his signature.

Q. And from there where did they go?

A. Forwarded to the Bureau of Supplies and Accounts.

Q. Mr. Meyer, in the preparation of requisitions for zinc for use at the Puget Sound Navy Yard, state to the jury where such were prepared, where they emanate and so forth.

A. Well, some requisitions for zinc were prepared in the office of the Naval Constructor, some—

Mr. ALLEN.—What time?

Mr. SHIPLEY.—Well, say in 1907 and 1908.

A. I am speaking about that time, sir. And some in the office of the Engineer, and others in the Storekeeper’s office.

(Testimony of Edwin F. Meyer.)

Q. Under what circumstances would they be prepared in these different departments?

A. Well, in the early part—in the early and middle part of the year 1907, they were all, I think, prepared in the offices of the Yard Department. [900—848]

Q. I didn't hear that.

A. I say, in the early and middle part of the year 1907 I think all requisitions for zinc were prepared in the offices of the Yard Department. In the latter part of that year we began the preparation of some.

Q. About what year?

A. Well, as near as I can recall from the folders they have brought into court, I think it was probably about the early fall of that year that we began the preparation of some requisitions.

Q. Meaning by that about what month?

A. August, September, October.

Q. The year 1907?

A. It has been quite a long while ago. I can only tell from the records.

Q. From an inspection of the files and the records which have been brought into this court and introduced as Government's Exhibits "65," "66," "67" and "68," I will ask you to state to the jury by whom those several requisitions were prepared.

A. Exhibit "65" is requisitioned 79, prepared October 7th. That was prepared in the office of the Engineer.

Q. Who was that?

A. There is no signature here. I think it was Cap-

(Testimony of Edwin F. Meyer.)

tain Stacey Potts at the time.

Q. What was his rank in the United States Navy?

A. Captain.

Mr. ALLEN.—What is the requisition for?

Mr. SHIPLEY.—State the number of the requisition and date.

A. 79 N. S. F. It is for 25 rolled zinc plates, 2800 pounds, estimate \$420, or 15 cents per pound, estimate.

Q. Under what date is that requisition? [901—

849] A. October 7th, 1907.

Q. In the preparation of that requisition by whom was the estimate made?

A. Made in the office of the Engineer of the navy yard.

Q. By whom was the time of delivery determined?

A. By the Engineer Officer, or some one acting for him.

Q. What was the time of delivery prescribed in that particular case?

A. Thirty days after date of contract.

Q. Just trace the procedure in the case of that transaction so the jury will be in possession of the facts.

A. Well, the records show that on October 7th the requisition was prepared to be delivered within thirty days, and that the award was made to W. A. Corder Company. The estimated price on the requisition was 15 cents. The award was made by the Purchasing Pay Officer at 11 cents.

Q. Did that go to the Bureau for approval?

(Testimony of Edwin F. Meyer.)

A. Yes, sir, Bureau of Steam Engineering approved it.

Q. At Washington? A. Yes, sir.

Q. When?

A. The Paymaster General approved it.

Q. What was his relation to the Navy Department, what was his rank?

A. Chief of the Bureau of Supplies and Accounts, Paymaster General.

Q. And those files bear his initial approved?

A. The stamp of his office; the signatures are not put on these copies.

Q. Does that requisition show for what purpose that zinc was required? [902—850]

A. For the use of U. S. "Wisconsin."

Q. What was that ship?

A. One of the battleships.

Q. Where was she at that time?

A. At the navy yard or—I think she was there, if I am not mistaken.

Q. That was in the fall of 1907? A. Yes, sir.

Q. What month? A. This was October.

Q. How long was that prior to the preparation by you of the requisition in the case, 438?

A. About six months. October is the date of this and April is the date of the requisition 438.

Q. Was the record in your office showing this estimate by the Engineering Officer of the navy yard at 15 cents?

A. This is one of the files there at the time, yes.

Q. Now, take up the next exhibit.

(Testimony of Edwin F. Meyer.)

A. Exhibit "66" is requisition prepared on the same day by the same office.

Q. That is, same as the last preceding one?

A. Same as the last preceding one.

Q. Just state the date.

A. This is requisition 79 prepared October 7th—no, this is a Storekeeper's copy.

The COURT.—"66" is navy yard?

A. Yes, a navy yard copy, "67," exhibit "67."

Mr. SHIPLEY.—That is the same one?

A. Yes. Requisition prepared the same day for the "Oregon."

Q. What is the "Oregon"? [903—851]

A. One of the battleships we had around here.

Mr. ALLEN.—What is the number of the requisition?

A. Requisition 81, sir, Naval Supply Fund. And that calls for 25 plates, about 2,800 pounds, estimated cost \$420.

Mr. ALLEN.—How big are the plates?

A. 1½ inch by 24 by 36. The delivery was required within thirty days, estimated cost \$420, or 15 cents per pound.

Mr. SHIPLEY.—That was prepared by the head of the Engineering Department, or under his supervision?

Mr. ALLEN.—Your Honor, these instruments, if they are in evidence, speak for themselves. He may read from those things.

Mr. SHIPLEY.—Well, I am asking him to look at it.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—He hasn't stated he has any personal knowledge.

The COURT.—I think you can read such part as you desire and not have the witness conclude.

Mr. SHIPLEY.—I am simply asking him to read from the exhibit. I thought he could do it more intelligently than any other way. He can tell whether it bears the signature of the Engineering Department.

A. I will say that they do not bear the official signature.

Q. Well, there is some mark on there that indicates it was prepared in the office? A. Yes, sir.

Q. What is it, reading from the exhibit?

A. Yes, sir.

Q. Was that requisition sent to Washington for authorization?

A. Yes, sir, bears the stamp of approval of the Bureau of Steam Engineering and of the Paymaster General.

Q. And that is one of the exhibits that was brought into this case by the Government? [904—

852] A. Yes, sir.

Q. The same as the one last testified to?

A. Yes, sir.

Q. What does that record show the amount of the award, or to whom awarded, and the price?

A. Awarded to W. A. Corder Company at 11 cents per pound.

Q. What date? A. October 25th, 1907.

Q. And that record was in your office about that

(Testimony of Edwin F. Meyer.)

time, what period?

A. The time it was made, October.

Q. And remained in your office up to the time of the initiation of the requisition involved under this indictment on April 1st? A. Yes, sir.

Q. Now, turn to the next?

A. These are all covered by these two.

Q. The other exhibit relative to the same transaction is a navy folder?

A. Is a navy folder, yes, sir.

Q. Mr. Meyer, referring to requisition 58 of September 4th, 1907, introduced by the Government in this case as Plaintiff's Exhibit Number "75"—

Mr. MORRIS.—Isn't that 1908 instead of 1907?

Mr. SHIPLEY.—No, December, 1907.

Q. I would ask you to state what that is?

A. September 4th, 1907, is the date.

Q. The date and the number?

A. This is requisition number 58, Naval Supply, dated September 4th, 1907.

Q. What is the article that was requisitioned for in that case.

A. A number of items— [905—853]

Mr. RIDDELL.—The Court didn't get that. What is that?

The COURT.—Plaintiff's Exhibit "75"?

A. "75," yes, sir.

The COURT.—Is that series 1908?

A. Series 1908.

Mr. SHIPLEY.—Mr. Meyer, to straighten this matter up, state what these series mean, when the

(Testimony of Edwin F. Meyer.)

year commences and when it ends?

A. Requisitions numbered in the office for identification beginning with July 1st, our fiscal year, and all requisitions prepared under a certain series, under a given series, beginning with July 1st, would be numbered consecutively during that year until June 30th of the next year.

Q. For instance, if a series commenced with July 1st of 1907 and ended the last of June, 1908, you would identify that as what series?

A. 1908, even though it was prepared in 1909.

Q. Taking the expiration of the series as the series number?

A. As the fiscal year, yes, sir. Item two of this requisition 58 calls for zinc plates, 10,075 pounds.

A. It carries an estimated price of 12 cents. The requisition has been corrected to read from 10,075 to 36,027 pounds, and the estimated price corrected from \$1,200 to \$435.34. The time of delivery was changed from September to October 15th.

Q. By whom were those changes made, under whose direction?

A. There is nothing that will show on the face of it here, Mr. Shipley. I know it was done in the Bureau.

Q. Are there any communications or endorsements in there from the Bureau at Washington showing the changes?

A. No, sir, they do not send endorsements when they make corrections of that kind. They make the

(Testimony of Edwin F. Meyer.)

corrections on a piece of paper and [906—854] forward it.

Q. And was that done in this case?

A. Yes, sir.

Q. The exhibit shows that? A. Yes, sir.

Q. By whom was that requisition originally prepared or initiated?

A. By the Naval Constructor, in the Naval Constructor's Office.

Q. By what department of the navy yard was the estimate fixed at 12 cents?

A. The Construction and Repair Department, under the Naval Constructor.

Q. Did you have anything to do with that?

A. No, sir.

Q. Did anyone in the Storekeeper's office have anything to do with the preparation of that estimate at 12 cents? A. No, sir.

Q. Or of fixing the time of delivery?

A. No, sir.

Q. Does this folder show the reception and inspection of the goods?

A. No, sir, this shows merely the award.

Q. To whom was that award made in that instance, if shown? A. W. A. Corder & Company.

Q. At what price? A. Ten and a quarter cents.

Q. Did you have anything to do with that?

A. No, sir.

Q. Did you ever have, either with reference to this transaction or the last two interrogated about, did you ever have any communications with Mr.

(Testimony of Edwin F. Meyer.)

Corder, or any conversation with him in [907—855] regard to those transactions prior to the award that was made to him? A. No, sir.

Q. Did you have any agreement, understanding or any combination with Mr. Corder by which these particular requisitions were to be prepared, estimates fixed and the goods inspected and received?

A. No, sir.

Mr. ALLEN.—Referring to these particular ones?

Mr. SHIPLEY.—And the one now in hand, and the last two preceding?

A. No, sir.

Q. Did you have any jurisdiction or control, or was it within your power to control the matter of fixing the estimate, the time of delivery, the specifications or the inspection or acceptance of the articles enumerated in that exhibit, or shown in that exhibit?

A. Nothing whatever to do with it, either of those transactions.

Q. I will ask you this question, Mr. Meyer: You called attention to the fact that corrections were made in this particular requisition. State whether it was an unusual or an extraordinary thing to happen in the procedure through the General Storekeeper's office, as shown by the records and files of that office, during your experience?

A. The Bureau at Washington occasionally made corrections in our requisitions.

Q. Calling your attention to requisition 153, Plaintiff's Exhibit "77" and requisition 174, Plain-

(Testimony of Edwin F. Meyer.)

tiff's Exhibit "78," I will ask you to examine those two folders introduced by the Government in this case as evidence, and call your attention to the procedure in those two cases.

A. Plaintiff's Exhibit "77" is requisition 154, dated November 15th, 1907; Plaintiff's Exhibit "78" is requisition 153, dated [908—856] November 15th, 1907. It is the same day. For zinc plates $1\frac{1}{2}$ by 24 by 36. The specifications are the same as that used by the Naval Constructor in exhibit "75." There were no Navy standard specifications in force at that time.

Mr. ALLEN.—No what, Mr. Meyer?

A. Navy standard, printed specifications, or Bureau specifications. They both bear an estimate of 15 cents. That is the same requisition that was just—one is G. S. K. copy and the other a Pay Office copy.

Mr. RIDDELL.—I thought one was requisition 153 and the other 154?

A. Yes. Well, they are both Navy Pay Office copies.

Mr. RIDDELL.—They are both Navy Pay Office copies?

A. They are both Navy Pay Office copies.

Mr. SHIPLEY.—Mr. Meyer, I will ask you if any one of those folders, I don't know whether it is requisition 153 or 154, there is a letter from the Storekeeper. Can you find that there?

A. We should have the Storekeeper's files of these two numbers.

(Testimony of Edwin F. Meyer.)

Mr. MORRIS.—That is the Storekeeper's files 153 and 154, Mr. Allen.

Mr. SHIPLEY.—I have got them here. They are among these papers here.

Q. Mr. Meyer, what do those folders show in regard to the awards and the price on which the purchase was made?

A. The award is made to the Great Western Smelting & Refining Company in both cases at 16 cents per pound.

Q. What date? A. December 3d, 1907.

Q. For what use?

A. Shows it is for stock on a requisition, but it was for some [909—857] special purchase, as I think the Storekeeper's folder will show.

Q. These particular folders don't show the particular purpose? A. No, sir.

Q. Is there anything in those folders showing whether that requisition went to Washington and received the approval of the Bureau?

A. Yes, sir, they went to Washington.

Q. Does it show the date of the approval?

A. November 21st, 1907.

Q. What is there there showing that? Just read it to the jury.

A. Stamp here of the Bureau of Supplies, and ordered purchased November 27, 1907, Navy Pay Office, Seattle, Washington.

Q. And that is the authority from whom to whom to complete these purchases.

A. It is authority from the Chief of the Bureau

(Testimony of Edwin F. Meyer.)

of Supplies and Accounts at Washington, D. C., to the Pay Officer in Seattle to complete that purchase.

Q. To do what? A. To make the purchase.

Q. At what price?

A. At the lowest price obtainable.

Q. What was obtainable in that case?

A. The lowest price in this case was 16 cents per pound.

Q. Are the proposals there?

A. The proposals are there, yes, sir.

Q. What do the facts show as to the proposal?

A. That the award was made at 16 cents per pound.

Mr. MORRIS.—Mr. Meyer, haven't you 153 and 154?

A. I have 153 and 154 of the Pay Office. This is Storekeeper's 153. [910—858]

Mr. MORRIS.—Haven't you 154, Storekeeper's?

A. No, sir.

Mr. SHIPLEY.—Does that requisition show by whom the requisition was prepared?

A. In the Storekeeper's office. I have that letter now that you referred to, sir.

Q. Well, read it, please. That is from what exhibit, first?

A. Exhibit "70," Plaintiff's Exhibit "70."

Q. And what requisition?

A. Requisition 153, Naval Supply Fund.

Q. That is exhibit "70"? A. Yes, sir.

Q. Introduced by the Government in this case?

A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. Read that, please.

A. This is to the Commandant of the navy yard.

Mr. ALLEN.—Is it so addressed?

A. Yes, sir.

Mr. ALLEN.—At the bottom?

A. Yes, sir. "Sir: The following mentioned Naval Supply Fund Requisitions cover material required immediately for use in Yard Department and for use on the 'California.' Number 153, 3,000 pounds zinc plate; number 154, 3,000 pounds zinc plate; number 156, 4,000 pounds boiler zinc; 169, 4,000 pounds boiler zinc.

Telegraphic authority was requested for the purchase of certain of these requisitions in addition to the approval of the Bureau in order to meet the exigencies of the service, and it is understood that purchase was authorized through the Navy Pay Office, Seattle, Washington, but up to date this office has no information as to when delivery may be expected. [911—859]

As the nondelivery of the above-mentioned material will delay the sailing of the 'California' it is requested that the Purchasing Pay Officer, Seattle, Washington, be requested to purchase with all possible expedition for immediate delivery at this yard. Very respectfully, Paymaster, U. S. Navy, General Storekeeper."

Mr. SHIPLEY.—Now, that letter was sent by whom to whom?

A. By the Storekeeper, Navy Yard, Puget Sound, to the Commandant of the Navy Yard.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—Are you testifying as to your own personal knowledge about that, or referring to the record before you?

A. Referring to the record.

Mr. ALLEN.—You don't know anything about it personally?

A. Well, I wrote the letter.

Mr. SHIPLEY.—That is one of the exhibits offered in evidence by the government in this case against you? A. Yes, sir.

Q. By whom was that particular letter dictated?

A. It was dictated by me.

Q. For what purpose?

A. For the purpose of expediting the delivery of the zinc called for under those requisitions.

Q. Were the facts stated in that letter true or false? A. True.

Q. Was that letter written as any part of a conspiracy, scheme or combination with any persons whomsoever to work a fraud upon the United States Government? A. No, sir.

Q. Did the necessities which existed at that yard at that time require the action that is stated in that letter? A. Yes, sir. [912—860]

Q. What action did the Commandant of the Puget Sound Navy Yard take in reference to that subject matter as disclosed by the evidence?

A. There is nothing in this folder to show, Mr. Shipley.

Mr. MORRIS.—We have 154 now, Mr. Meyer.

Mr. SHIPLEY.—At this time, if the Court please,

(Testimony of Edwin F. Meyer.)

we offer the Storekeeper's file for this same requisition, number 154, series 1908, dated November 15th, 1907.

The COURT.—Has that been marked for identification?

Mr. SHIPLEY.—It has not, your Honor.

The COURT.—That will be Defendants' Exhibit "A-104."

Mr. SHIPLEY.—No objection to that, is there?

Mr. ALLEN.—No, not if you have any use for it. (Folder referred to received in evidence and marked Defendants' Exhibit "A-104.")

Mr. SHIPLEY.—It is yard folder for requisition 154.

Mr. ALLEN.—It is yard folder for the other exhibit already in evidence.

Mr. SHIPLEY.—That is the companion folder, or the yard folder, for the same transaction concerning which you have just been testifying to the jury?

A. Yes, sir.

Q. Calling your attention to this folder, Mr. Meyer, examine same and see if there is anything there throwing any light upon this transaction.

Mr. ALLEN.—Which transaction is this?

Mr. SHIPLEY.—To which he has just testified?

A. Well, this is merely the Storekeeper's copy, or the yard copy, of 154. It contains a memorandum that I gave to the clerk who physically prepared the requisition. [913—861]

Q. Well, read it.

A. It originally was 3,000 pounds of zinc plate 1½

(Testimony of Edwin F. Meyer.)

by 24 by 36, at 12 cents; item two, 3,000 pounds zinc plate $\frac{1}{2}$ by 24 by 36 at 12 cents.

Mr. ALLEN.—I suggest the jury better take a look at that.

Q. That is your handwriting? A. Yes, sir.

Mr. ALLEN.—Let him read it.

A. (Reading:) “To be practically pure soft zinc, and to be thoroughly compressed by rolling, making a solid homogeneous material, smooth and free from defects.”

Mr. SHIPLEY.—This memorandum was written by whom? A. Written by me.

Q. For what purpose?

A. To the clerk who was actually going to prepare the requisition, to guide him.

Q. And what was done with that memorandum by you?

A. I turned it over to the clerk who was going to prepare the requisition.

Q. And then what was done?

A. Then he prepared two requisitions for that material, because it would be more than \$500, each of those items, and therefore he made one requisition—

Q. What was the estimated price that he put in the requisition?

A. The estimated price I gave him was 12 cents; the estimated price he put in the requisition was 15 cents.

Q. Who was responsible for that change from 12 to 15 cents? A. Why, he prepared the requisition.

Q. Did you ever know, prior to that folder being

(Testimony of Edwin F. Meyer.)

brought into court, that change had been made from 12 to 15 cents? [914—862]

A. No, sir, I discovered it here in looking over the folders.

Q. And this memorandum that you speak of is in your handwriting? A. Yes, sir.

Q. Is there any mark or designation upon that requisition showing by whom the physical preparation was made?

A. No, sir, you would have to get the first of the requisition to show it.

Q. Sir?

A. You would have to get the first copy of the requisition to show.

Q. You can't state the person, then, who prepared it?

A. No, sir. I might say that I think it was Mr. Spaulding.

Mr. ALLEN.—You say you didn't prepare it yourself?

A. No, sir.

Q. Do you know that you didn't do that?

A. I know that I did not physically prepare it.

Mr. SHIPLEY.—That memorandum was prepared by you and turned over to the clerk under you, upon whom you relied to do the physical work, for the purpose of guiding him and giving him facts necessary to put into a requisition?

A. Yes, sir. When I would get any information over the telephone from any of the officers, or anyone connected with the naval establishment who wanted

(Testimony of Edwin F. Meyer.)

any material, I took the information down on a little pad of that kind and I turned it over at intervals to the Requisition Clerk to be put into form by him, and he would file, as a rule, those little slips in the folders.

Q. Mr. Meyer, in the preparation of that requisition, or in dictating to the clerk under you to prepare an estimate of 12 cents, were you in any conspiracy with Mr. Goldberg, Mr. Corder, Mr. Kettlewell, or any other person, with reference to this [915—863] particular purchase, or to defraud the United States Government? A. No, sir.

Q. Has the clerk who prepared that requisition and made that change from 12 to 15 cents, as you furnished it to him, to your knowledge, ever been charged or indicted for a criminal act in reference to that transaction? A. No, sir.

Q. Was the authority to make this purchase at 15 cents given by the Bureau at Washington after this requisition was prepared? A. Yes, sir.

Q. And prior to the letting of the contract and the award at the Naval Pay Office? A. Yes, sir.

Q. Now, that was when, in what month of what year?

A. That was November or December, 1907. I think the requisition is dated November.

Q. Some five or six months prior to the preparation, or causing to be prepared the requisition involved in this particular case? A. Yes, sir.

Q. Mr. Meyer, can you state to this jury at this time why you suggested the estimate of 12½ cents in this particular case?

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—438, now?

Mr. SHIPLEY.—No, to the one that is now being examined by the jury.

A. 12 cents. Well, that was the governing price locally at that time. The Naval Constructor and the Engineer Officer all made their estimates from 12 to 15 cents.

Q. Mr. Meyer, calling your attention to Defendants' "A-25," Defendants' Exhibit "A-24," requisition 170-L, series of 1910, [916—864] under date of February 25th, 1910, examine those and state what they are.

Mr. ALLEN.—Before you state that—

Mr. SHIPLEY.—Just generally, so you can see what the subject is.

Mr. ALLEN.—All right.

A. Well, it is requisition on which there are two items of zinc $\frac{1}{2}$ and $\frac{1}{4}$ inch by 24 by 28, 24 by 60, on which the estimate is $12\frac{1}{2}$ cents.

Mr. ALLEN.—That is 1910?

Mr. SHIPLEY.—1910, yes.

A. This is February, 1910, yes, sir.

Mr. SHIPLEY.—They are marked for identification.

Q. Those are all the folders that you hold in your hand? A. Naval Supply Fund Folder 170-L.

Q. Is what? A. Yard and Pay Office copy.

Q. Just state which—

A. The Pay Office copy is "A-24" and the yard copy "A-25."

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—We will offer those two exhibits in evidence.

Mr. ALLEN.—Those I have never seen. These are quite remote in regard to point of time (examining same).

Mr. MORRIS.—They relate to the zinc.

Mr. SHIPLEY.—They relate to the same class of articles, your Honor, introduced for the purpose of showing the same procedure both before and after the date of the alleged offense in other transactions, concerning which there is no complaint.

The COURT.—Let them be marked “A-105” and “A-106” and be admitted.

(Folders referred to received in evidence and marked Defendants’ Exhibits “A-105” and “A-106,” respectively.) [917—865]

Mr. SHIPLEY.—They are marked “A-24” and “A-25” for identification.

Mr. ALLEN.—I didn’t hear your Honor’s suggestion as to why they were admitted.

The COURT.—I understand they are admitted for the purpose of showing a line of conduct, that is the idea?

Mr. SHIPLEY.—And the procedure.

The COURT.—Admitted.

A. These requisitions were prepared in the Storekeeper’s office. Item 3, for 2,500 pounds, and item 5, the estimated price was 12½ cents. Purchase was made from the Great Western Smelting & Refining Company at 12½ cents.

Q. By whom were those requisitions prepared?

(Testimony of Edwin F. Meyer.)

A. In the Storekeeper's office, under my supervision.

Q. Is there anything in there showing who did the physical work on them? A. No sir.

Q. Are they initialed by the party who drew them up?

A. No, sir, these copies do not show the initial.

Mr. SHIPLEY.—Mr. Meyer, in those folders—what was the estimated price in that case?

A. 12½ cents.

Q. Who fixed that.

A. It is done in the Storekeeper's office, either by myself or—

Q. Is there anything in that folder showing any letter of endorsement or transaction with the Commandant?

Mr. MORRIS.—Look at exhibit "A-25," Mr. Meyer.

A. No, sir, there is nothing here. I have a record here which shows a note on the face in Mr. Barnes' handwriting—

Q. There is nothing further there you desire to mention? [918—866]

A. No, sir, in which he evidently begun the preparation of that requisition.

Mr. ALLEN.—Evidently begun what?

A. The necessity for the articles. I see here he has a note, "6,000 pounds received from California lasted over a year."

Q. Isn't there a letter in there regarding the necessity, or something, for that transaction that you

(Testimony of Edwin F. Meyer.)

called to my attention this morning?

A. That note there of Mr. Barnes on which he noted the fact there is no necessity for that.

Q. We don't care anything about that.

A. At the same time we were in communication with Washington, calling the Bureau's attention to the fact that local price was prohibited. That occurred just about six days prior to this requisition.

Q. Isn't there a letter in that folder calling attention to the requirement of that particular zinc for a certain ship? A. No, sir.

Q. Or if it is not here on time it would cause delay?

A. It is for repairs to "Washington" and "Tennessee," but there is no particular letter.

Q. Mr. Meyer, previous to the time of the preparation of requisition 438, covered by the indictment in this case, did the Secretary of the Navy authorize the purchase of any zinc, as shown by the records in this case?

A. Yes, sir, he had authorized the purchase of zinc prior to that time.

Q. Calling your attention to requisition 304, dated February 5th, 1908, Plaintiff's Exhibit "72" in this case. Examine the contents of that file and state the procedure that was gone through, as [919—867] shown from the files. That is an exhibit offered by the Government in this case?

A. Yes, sir. It is requisition 304, Naval Supply, for rolled sheet zinc, 15,000 pounds.

Q. What dimensions?

A. $\frac{1}{2}$ and $\frac{3}{4}$ and 1 inch by 24 by 36.

(Testimony of Edwin F. Meyer.)

Q. And that is introduced by the Government as evidence in this case?

A. Yes, sir. It shows that the requisition—

Mr. ALLEN.—How many thousand pounds is that, Mr. Meyer?

A. 15,000, sir. Dated May 5th, 1908, was approved by the Bureau of C. & R., that is, Construction and Repair at Washington, on the 13th of February.

Mr. SHIPLEY.—What year?

A. 1908. And approved by the Paymaster General of the Navy by wire on the 17th of February, 1908.

Q. And who prepared the requisition?

A. In the Storekeeper's office?

Mr. SHIPLEY.—Mr. Meyer, state the facts just as nearly as you can at this time as to the steps and proceedings in reference to the preparation of this requisition and its final proceeding through your office.

A. Well, the requisition was prepared in the requisition office of the Storekeeper and forwarded to the Bureau of Construction and Repair, the estimated price placed on it at 15 cents. That is in February, 1908. The requisition after having been approved by the Bureau of Construction and Repair and the Paymaster General, the purchase was ordered through the Purchasing Pay Officer, Seattle. The proposals were sent out under date of February 21st, and all of the bids received were forwarded to Washington, D. C. [920—868]

Q. Now, explain to the jury what you mean by

(Testimony of Edwin F. Meyer.)

that, Mr. Meyer, so they will understand what was done.

A. The Purchasing Pay Officer in the city here did not make the award without the approval of the Paymaster General and the Secretary of the Navy, therefore all the bids received by him were forwarded to the Bureau at Washington. It shows that the Paymaster General here—

Mr. ALLEN.—I object to your stating what it shows.

Mr. SHIPLEY.—Just read, Mr. Meyer.

A. (Reading:) Bureau of Supplies and Accounts, March 2d, 1908. Respectfully referred to the Bureau of Construction and Repair for recommendation and return. It is noted that all bids under this requisition must be referred to the Secretary of the Navy prior to award. E. B. Rogers, Paymaster General, U. S. Navy, Department of the Navy, Bureau of Construction and Repair, March 3d, 1908. Respectfully returned to the Bureau of Supplies and Accounts by the Department recommending that award of contract for the material required on the within referred to requisition be made to the Great Western Smelting & Refining Company, the lowest bidder, at \$1,795. Bids returned herewith. J. H. Willard, General Constructor, U. S. Navy, acting Chief of Bureau.

Q. Where was he?

A. Navy Department, Washington, D. C. Third endorsement: (Reading:) Navy Department, March 4th, 1908. Bureau of Construction and Repair. Forward bids received under Naval Supply Requisi-

(Testimony of Edwin F. Meyer.)

tion 304, Navy Yard, Puget Sound, covering rolled sheet zinc, estimated to cost \$2,250. Proposals: Great Western Smelting & Refining Company, \$1,795; American Iron & Metal Company, \$1,875; W. A. Corder & Company, \$1,875. Respectfully returned to the [921—869] Bureau of Supplies and Accounts approving the recommendation of the Bureau of Construction and Repair contained in the second endorsement hereon. In accordance therewith, the Bureau is authorized to make award of contract for the material required on Naval Supply Fund requisition number 304, Navy Yard, Puget Sound, Washington, to the Great Western Smelting & Refining Company, the lowest bidder, at \$1,795. Trueman H. Newberry, acting secretary.

Fourth endorsement: (Reading:) Bureau of Supplies and Accounts, March 5th, 1908. Bids, requisition number 304. Respectfully returned to Navy Pay Office, Seattle, with reference to the third endorsement to be complied with. E. B. Rogers, Paymaster General, U. S. Navy.

Q. What is the third endorsement to be complied with?

A. That is the endorsement of the Assistant Secretary in authorizing purchase from the Great Western Smelting & Refining Company.

Q. At what price per unit?

A. At \$11.90 per hundred.

Q. And the estimated price under the requisition was what? A. 15 cents.

Q. And these proceedings taking place in the office

(Testimony of Edwin F. Meyer.)

of the Secretary of the Navy and in the office of the Bureau of Supplies and Accounts at Washington, D. C., were in what month and what year?

A. March, 1908.

Q. This zinc was purchased, then, from whom, finally, as shown by these exhibits?

A. Great Western Smelting & Refining Company.
[922—870]

EDWIN F. MEYER on the stand, direct examination (resumed.)

(By Mr. SHIPLEY.)

Q. Handing you Plaintiff's Exhibit "79," introduced by the Government as one of its proofs in this case, I will ask you to examine that folder and see what it contains and read the contents.

A. This is requisition number 444, Naval Supply Fund, for 22,000 pounds of rolled zinc.

Mr. ALLEN.—Is that in evidence?

Mr. SHIPLEY.—Yes, one of your exhibits.

A. (Continuing.) Estimated cost, 12½ cents. The requisition was approved by the Navy Department April 10th, 1908, and was approved by the Paymaster General for the purchase through the Navy Pay Office, Seattle, Washington, on April 11th, 1908, with the notation that the bids to be referred to the Bureau for instructions as to award.

Q. Now, what does that refer to?

A. The purchase of the zinc on this requisition.

Q. What were the proposals in that case?

A. W. A. Corder Company, \$12.45 a hundred; the Fowler Metal Company, \$12.50 a hundred; P. Mc-

(Testimony of Edwin F. Meyer.)

Manus, \$12.70 a hundred; American Iron & Metal Company, \$12.75 a hundred, and the Hallidie Machinery Company, "No bid."

Q. Mr. Meyer, from an examination of the record which you now hold in your hand, can you state whether it shows there whether the award was made in the Navy Pay Office upon the receipt of the bids upon proposals in ordinary cases?

A. It was not done in that manner, sir.

Q. Well, what was done in lieu of the ordinary and regular procedure? [923—871]

A. I read from a letter here written by the Purchasing Pay Officer under date of May 6th, 1908. (Reading:) Sir: I have the honor to submit herewith for instruction as to award of bids for rolled zinc under Naval Supply Fund requisition number 444, and, as directed by the Bureau's endorsement on requisition. Respectfully, Robert H. Orr, Paymaster U. S. Navy, Purchasing Pay Officer. It is addressed to the Paymaster General, Navy Department, Washington, D. C.

Q. And from that the fact appears that these proposals, instead of being accepted and an award made, that the entire subject matter was forwarded to the Department at Washington, D. C., and with what result?

A. (Reading:) Bureau of Supplies and Accounts, May 11th, 1908. Subject: Purchasing Pay Officer, Purchasing Pay Office, Seattle, Washington. Bids received under Naval Supply Fund requisition number 444 for rolled sheet zinc respectfully submitted

(Testimony of Edwin F. Meyer.)

to the Secretary of the Navy. It is recommended that the Bureau be authorized to wire award of this zinc to the lowest bidder, the W. A. Corder Company. E. B. Rogers, Paymaster General, U. S. Navy.

Q. What was the rank of Rogers, whose name is signed to that endorsement?

A. Paymaster General, U. S. Navy. He was the Chief of the Bureau of Supplies and Accounts.

Q. He was in control of the subject matter, was he?

A. I didn't hear that.

Q. He was in control over this subject matter?

A. Yes, sir.

Q. Above any of the departments of the navy out here on this coast? A. Yes, sir. [924—872]

Q. Did your office, Paymaster Spear or yourself, personally have any authority or power to change or alter the procedure, or make anything differently done in that matter from what was directed by Paymaster Rogers? A. No, sir.

Q. Now, what does that record show was subsequently done in that case, from that record?

A. I read here from the endorsement from the Navy Department, May 12th, 1908. (Reading:) Bureau of Supplies and Accounts submits bids received under Naval Supply Fund requisition number 444, Navy Yard, Puget Sound, Washington, covering rolled sheet zinc, estimated to cost \$2,750. Proposals: W. A. Corder Company, \$2,739; Fowler Metal Company, \$2,750; P. McManus, \$2,794; American Iron & Metal Company, \$2,805.50. Respectfully returned to the Bureau of Supplies and Accounts ap-

(Testimony of Edwin F. Meyer.)

proving the recommendation of the Paymaster General contained in the first endorsement here and authorizing award in accordance therewith to W. A. Corder Company, the lowest bidder, at their bid of \$2,739, delivery within thre days. Truman H. Newberry, acting Secretary.

Q. Mr. Meyer, can you state, from the examination of that record, where that requisition initiated?

A. In the Storekeeper's office, navy yard.

Q. In your department? A. Yes, sir.

Q. Can you state at this time who actually prepared that particular requisition.

A. No, sir, I cannot say where it was prepared.

Q. What is that?

A. I cannot say who the clerk was who prepared it.

Q. What was the estimate that was fixed on that requisition by your [925—873] Department?

A. 12½ cents per pound.

Q. What was the time of delivery specified in that requisition by your department?

A. Within fifteen days after the date of award.

Q. The final order allowing the purchase from Corder specified how many days for delivery?

A. Three days.

Q. And that was inserted by whose authority?

A. Purchasing Pay Officer and the Secretary of the Navy.

Q. Mr. Meyer, that requisition was initiated on what day? A. April 3d, 1908.

Q. When with reference to the initiation of the requisition 438, involved in the indictment on which

(Testimony of Edwin F. Meyer.)

you are now on trial?

A. Approximately the same time; a couple of days after.

Q. And what is the quantity of zinc called for in that purchase? A. 22,000 pounds.

Q. At the time of the preparation of that requisition, and at the time of the forwarding of the proposals for bids to the Navy Department at Washington, and the authorizing of the purchase from W. A. Corder, were you a party to any crime or combination or conspiracy with Corder or others?

A. No, sir.

Q. To defraud the Government in this transaction? A. No, sir.

Q. What are the sizes of the zinc called for? Counsel wants to know.

A. $\frac{3}{4}$, $\frac{5}{8}$ and 1 inch by 24 by 36, and 24 by 48.

Q. Mr. Meyer, can you state to this jury, from your experience and knowledge gained while in the Storekeeper's office, transactions [926—874] connected with the purchase of zinc, whether there is any difference in the price of zinc of the dimensions mentioned in this requisition than in the dimensions mentioned in requisition 438?

A. It is all a uniform price.

Q. Why is that, if you know?

A. It is the same character of supplies, merely one is cut up into smaller sizes.

Q. Mr. Meyer, calling your attention to Plaintiff's Exhibit "3," being one of the folders produced by the United States Government as evidence in this

(Testimony of Edwin F. Meyer.)

case, I will ask you to examine that folder and state, if you know, what it is?

A. It is a folder containing the papers relative to a contract number 3318, entered into by the Navy Department, Bureau of Supplies and Accounts, at Washington, with the Central Metal and Supply Company under date of February 11, 1908. It is for 50,000 pounds of boiler zinc.

Q. What dimensions?

A. That is the standard size, $1\frac{1}{2}$ by 6 by 12.

The COURT.—Has that been identified, that folder?

Mr. ALLEN.—That is in evidence, your Honor.

Mr. SHIPLEY.—That is exhibit “3,” your Honor.

Q. Mr. Meyer, the exhibit which you hold in your hand is one of the exhibits that was produced by the Government in this case? A. Yes, sir.

Q. By whom was the requisition upon which that purchase was made initiated?

A. In my office, by myself.

Q. In what form?

A. Well, the form of this requisition was a request card. It differs from any other— [927—875]

Q. Explain to the jury what you mean by that, and how that differs, if you know, in regard to other forms of requisitions.

A. That was a form brought into vogue by the Navy Department during that calendar year, I think in the year 1907, the previous year 1907. It was a form that we used only in making requisition in the

(Testimony of Edwin F. Meyer.)

Bureau for articles that were to be advertised by the Bureau. The Bureau, of course, always observed the prerogative of purchasing it in any form they saw fit, but it was a form that we used when we wanted the Bureau to consider the advertising of an article. There was only one sheet of it prepared, and there are no copies made, except the copies—the copy we keep in the office.

Q. What is the difference in the procedure in that case than in the ordinary case?

A. Well, that requisition, after being signed by the Storekeeper, goes directly to the Bureau of Supplies and Accounts, and if, after the Bureau communicated with the Technical Bureau, the article was wanted, it would be advertised, that is, printed proposals would be prepared and the dealers all over the country would be notified.

Q. Now, you call that a request card?

A. Yes, sir.

Q. When was that initiated by you?

A. December 3d. There is no record here, but I remember distinctly that it was December 3d from other records here. Mr. House, I think, has the request card. It was dated December 3d.

Q. The request card is in some other exhibit, is it?

A. Not in any other exhibit. I don't think it has been brought into court.

Q. You have seen it in Mr. House's custody?

A. Yes, sir.

Q. Recently, during the trial of this case? [928—876]

(Testimony of Edwin F. Meyer.)

A. I asked Mr. House for it when I was looking over these folders in order to get—

Q. You heard the testimony in this case of Mr. Kettlewell, during the month of October, November and December he had numerous conversations with you relative to certain purchases that were being made by Mr. Goldberg, and with reference to what you were to do in aid of the matter of getting business through the purchase of zinc there, you heard that testimony? A. Yes, sir, I did.

Q. At this time, when you initiated this purchase, did you designate or start it in a manner which made it necessary for that particular form of procedure?

A. Yes, sir, I started in the manner that the Bureau would of necessity advertise it and not be purchased from the local office.

Q. If at that time you had been in a conspiracy, such as Mr. Kettlewell has testified to, could you just as well have initiated it by an open purchase form of requisition as by request card form?

Mr. ALLEN.—I object to that as being entirely outside of the facts, your Honor, shown in this case.

The COURT.—Objection sustained.

Mr. SHIPLEY.—Exception.

Q. Mr. Meyer, state to this jury whether there was anything at that time that would have prevented your initiating this purchase under an open purchase form of requisition rather than by a request card? A. Nothing to prevent it; no, sir.

Q. Now, just explain to the jury what was done in the case of this transaction.

(Testimony of Edwin F. Meyer.)

A. The request card was dated April 3d; it was a request card number 10, calling for 50,000 pounds of rolled sheet boiler zinc [929—877] plate $\frac{1}{2}$ by 6 by 12, the standard size, and gave the specifications, and so forth,—

Mr. ALLEN.—You said a request card dated April 3d?

A. No, December 3d. And as a delivery specification the request card required the material to be delivered in two lots. At that time we made requisitions about every six months for material and storing facilities were very limited and we couldn't take care of a very large quantity of supplies, that is, in February, or December, the year before. We figured we would only want on hand a certain quantity of supplies and I therefore stipulated on the face of that request card that it would be delivered in two installments, the first installment within forty-five days after date of contract and the second delivery within ninety days after date, in order that it might come along in intervals of about forty-five days. The Bureau, however, in placing the contract, eliminated that provision and required delivery of the entire quantity within forty-five days.

Mr. SHIPLEY.—What was done in regard to completing the purchase?

A. Well, the purchase was made and the records show—

Q. Through what instrumentality was the purchase made?

(Testimony of Edwin F. Meyer.)

A. By the Bureau, after advertisement. They advertised for it.

Q. Who did?

A. The Bureau of Supplies and Accounts, and bids to be opened at Washington on the 21st of January, that is, a month and twenty-one days after the date of the requisition, and delivery to be made on or about April 16, 1908. The materials were actually delivered, however, on the 7th of March.

Q. When? A. 7th of March. [930—878]

Q. Does that folder show the bidders?

A. No, sir; that is a matter of record in the Navy Department.

Q. Where? A. Washington, D. C.

Q. Does the Storekeeper's office, or the Navy Pay Office in Seattle, have any record of that?

A. No, sir, no record whatever.

Q. Was that a transaction subsequent to that procedure that had anything to do with these offices here?

A. No, sir. We were furnished a copy of the contract which the Navy Department entered into with the contractor.

Q. Well, we haven't got up to the contract yet. Now, to whom was the award made and the contract entered into in that case?

A. Central Metal & Supply Company. They are people in the—

Q. Where are they located?

A. They have offices on Lombard Street in Balti-

(Testimony of Edwin F. Meyer.)

more; they handle the output of the factory in the middle west.

Q. And you say after this contract was made then a copy of that was retained in the Storekeeper's office at Bremerton? A. Yes, sir.

Mr. ALLEN.—Now, your Honor, let him testify; don't ask him—

Mr. SHIPLEY.—I ask him if he did testify to that?

A. A contract was entered into and a copy of it furnished for information of the Storekeeper.

Q. Then what was done in the Storekeeper's office with reference to that?

A. Well, they filed the contract and prepared a due card, that is, a card showing the date on which this material would be due from the contractor.
[931—879]

Q. Now, Mr. Meyer, you testified to purchases made through the direction of the Secretary of the Navy and of the Department of Supplies and Accounts upon requisition initiated in February, and one in April, 1908, in which the purchase price of zinc was from 11 to 12 cents per pound. I would ask you what date these transactions last referred to were conducted through the departments at Washington with reference to the one which you now hold in your hand.

A. Both of those were subsequent to this date here. The contract was entered into here February 26th.

Q. The transactions in reference to the one you

(Testimony of Edwin F. Meyer.)

now hold in your hand were then shown upon the records of the Department in Washington at the time these two subsequent ones were initiated and passed through the same department?

Mr. SHIPLEY.—Mr. Meyer, the folders introduced in evidence as Plaintiff's Exhibits "79" and Plaintiff's Exhibit "72," which you previously examined, each show the date, do they not, of the different transactions with reference to the subject matter contained both under the supervision of the Secretary of the Navy and in the Bureau of Supplies and Accounts, Washington, D. C.?

A. They show the dates, yes, sir.

Q. The folder which you now hold in your hand show dates in which this transaction passed through the Department or Bureau of Supplies and Accounts at Washington, D. C., does it?

A. It does, yes, sir.

Q. And those dates are as stated by you in your previous testimony to the jury? A. Yes, sir.

Q. Those records also show?

Mr. ALLEN.—Which ones? [932—880]

Mr. SHIPLEY.—The three he is now testifying concerning also show the estimated price and the contract price in each instance, do they not?

Mr. ALLEN.—Are you asking as to the copy on file at Bremerton?

Mr. SHIPLEY.—I am asking from the files as disclosed in Plaintiff's Exhibit "72," those being requisition 304, by exhibit "79," being requisition 444, and the exhibit "3," being contract number 8318, all

(Testimony of Edwin F. Meyer.)

introduced in this case by the Government, concerning the contents of which folder this witness has just been examined, whether they each show the respective estimated price and contract price at which the goods were purchased?

Mr. ALLEN.—Just a moment, your Honor. I object to the form of that question as being—the witness being disqualified to state as to what the record at Washington shows, unless we have that instrument here before us. He doesn't know what that record shows, and the question of counsel is sufficiently broad to include that, or this one here, or the one across the Sound, and I submit, your Honor, he should confine his inquiry to one particular place or the other.

The COURT.—I understand it is confined to these folders?

Mr. SHIPLEY.—Yes, your Honor. Of course, I could hand him each one separately, but I have simply combined the three in one.

The COURT.—Let him answer.

A. Exhibit “72” and “79” show the estimate and the contract price, but the estimate is not in this contract here for the reason that the request card upon which this was based is absent.

Mr. SHIPLEY.—Oh, I see. But is the contract price shown in there?

A. The contract price is shown here.

Q. And the date?

A. And the date, yes, sir. [933—881]

Mr. SHIPLEY.—We would like to have Mr.

(Testimony of Edwin F. Meyer.)

House produce the card, the request card. The witness said he saw it in Mr. House's possession the other day.

The COURT.—Proceed.

Mr. ALLEN.—I will see if I can get it.

Mr. SHIPLEY.—The request card which initiated this purchase under contract 8318, Plaintiff's Exhibit "83."

The WITNESS.—Number 10 is that card.

Mr. ALLEN.—That is the number of the card, Mr. Meyer?

A. Number of the card, yes, sir.

Mr. SHIPLEY.—Mr. Meyer, what was the purpose of the accumulation of the stock which is covered by the contract disclosed or contained in the folder which you now hold in your hand?

A. It was for issue to the ships which we had at the yard and which we had in the vicinity of the navy yard.

Q. What ships particularly, if any?

A. The Pacific Fleet is the only vessels we had there. We had previously been receiving requisitions—

A. We had previously been receiving requisitions for large quantities of zinc during the fall of 1907. These requisitions were covered by local purchases in quantities ranging from three to four thousand pounds each. This requisition was initiated for the purpose of buying a large quantity of zinc for the purpose of keeping in stock and issuing to these ships as called for in lots of from three to seven thou-

(Testimony of Edwin F. Meyer.)

sand pounds, which they were asking for about that time.

Q. Each vessel? A. Each vessel, yes, sir.

Q. At that time did you know of the intended arrival of the battleship fleet, generally referred to as the Atlantic Fleet, and the [934—882] necessity of outfitting them? A. No, sir.

Q. At the time this contract was initiated in December? A. I did not know it, sir.

Q. Mr. Meyer, examine the card which I now hand you and state to the jury whether or not you know what it is.

A. Yes, sir. Request card for boiler zinc prepared in the office of the Storekeeper.

Q. Is that the card to which you have referred in your previous testimony?

A. Yes, sir, that contract was based upon this call.

Q. That is the contract in the folder which you have just been testifying concerning was based upon this card?

A. This call, yes, sir, this card.

Q. This was from the files of the Storekeeper's office, was it, Mr. Meyer? A. Yes, sir.

Mr. ALLEN.—That is it, is it, Mr. House?

Mr. HOUSE.—Yes.

Mr. ALLEN.—You offer it in evidence?

Mr. SHIPLEY.—Yes.

Mr. ALLEN.—No objection.

Mr. SHIPLEY.—We offer this card in evidence, your Honor.

Mr. ALLEN.—Do you want to put it in as part of

(Testimony of Edwin F. Meyer.)

that folder or put it in separate?

Mr. SHIPLEY.—Mr. House, does this belong in that folder?

Mr. HOUSE.—No, it is a separate file.

Mr. SHIPLEY.—Possibly it might be easier to keep from losing it—

The COURT.—Better put it in that folder. [935—883]

Mr. ALLEN.—We have no objection.

The COURT.—It belongs in there.

Mr. SHIPLEY.—No, your Honor, it doesn't, but it is so small it might get lost.

The COURT.—Very well, put it in the folder.

Mr. SHIPLEY.—Let the record show this request card is placed in the folder. Mark the request card—Government's Exhibit "3."

The COURT.—Better mark it "3" also.

Mr. SHIPLEY.—Let the record show "3-A" is one of the contents of Plaintiff's Exhibit "3."

(Paper referred to received in evidence and marked Plaintiff's Exhibit "3-A.")

Mr. SHIPLEY.—Mr. Meyer, read that card to the jury.

Mr. ALLEN.—I ask you to read it to the jury.

Mr. SHIPLEY.—Why, if it will accommodate counsel any better I will read it. I am not particularly struck on hearing the sound of my voice. (Reading:) December 3d, 1907. Left-hand corner, 124, Naval Supply Fund, request number blank.

Q. Does this mean—

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—Well, I don't want his construction of it.

Mr. SHIPLEY.—Well, he is familiar with it and I am not. There is an obliteration here.

Mr. ALLEN.—That is to be delivered at the Puget Sound Navy Yard.

Mr. SHIPLEY.—It should be "To be delivered at the Navy Yard, Puget Sound, Washington, within ten days as noted. Quantity, 5,000 pounds."

A. That is not within ten days, I don't think.

Mr. ALLEN.—It so reads, anyhow.

Q. No, sir, it does not. Request number ten.

Mr. SHIPLEY.—That is the number of the request. Within blank days. [936—884] This ten, is that the number of the card?

A. This was a carbon copy and the ten should be on that line (showing).

Mr. ALLEN.—Well, I object to any statement to what it should be. It stands there so it can be read anyway.

The COURT.—Read it.

Mr. SHIPLEY.—Mr. Meyer, you are familiar with this card?

A. Quite familiar, yes, sir.

Q. And the ten below the line is caused by the dropping of the lower sheet on that corner (showing)?

Mr. SHIPLEY.—(Reading:) Within blank days after date of contract or Bureau order. Quantity, 5,000 pounds. Article, rolled sheet boiler zinc, 12 inches by 6 inches by 1½, to be in accordance with

(Testimony of Edwin F. Meyer.)

specifications 21-Z-2, and to be delivered at the navy yard, Puget Sound, Washington, in carload lots in two installments; first delivery to be made within forty-five days after date of contract; second delivery within ninety days after date of contract. Schedule number 668, open January 21st, 1908; contract number 8318; date, April 16, 1908 beneath.

Q. Mr. Meyer, I will ask you if you dictated that card?

Mr. ALLEN.—Let the jury see that card.

Mr. SHIPLEY.—I will let them see it when I get ready.

A. I did, yes, sir.

Q. Is this the original or a copy?

A. It is the copy, sir.

Q. What became of the original of this card, if you know?

A. Forwarded to the Bureau of Supplies and Accounts, Washington, D. C.

Q. Is this a carbon copy of the original that was forwarded to Washington? [937—885]

A. Yes, sir.

Q. Calling your attention to the figure 10 at the top of that card, I will ask you if you know to what that refers and what it is?

A. It is the request number, sir, the number of the paper.

Q. How do you know that?

A. Because I made it out and that is the way it is. Here is the request number here (showing) 10, corresponding to that.

(Testimony of Edwin F. Meyer.)

Q. Referring to the folder, does the request number on the folder correspond with the number 10 on the carbon copy of the card?

Mr. ALLEN.—He has just testified to that, I submit.

A. It does.

Mr. SHIPLEY.—Mr. Meyer, at the date that that request card was prepared, what, if any, knowledge did you have concerning the necessity in the near future of outfitting or furnishing with supplies the Atlantic Squadron or battleship fleet at the Puget Sound Navy Yard?

Mr. ALLEN.—Object to that for the reason, your Honor, it is a repetition, the question having been asked the witness no more than ten minutes ago.

Mr. SHIPLEY.—I withdrew the question, your Honor, because this card hadn't been here.

The COURT.—Let him answer.

A. I do not know anything about it, sir.

Mr. SHIPLEY.—What date, with reference to the making out of that card, did you first know or have knowledge in your capacity as a clerk in the General Storekeeper's office of the necessity of outfitting the Atlantic Squadron from the navy yard of Puget Sound? [938—886]

A. It was during the month of March, I think, sir; I am not sure.

Q. State what was done by you and under your supervision towards making provision for the outfitting and supplying the battleship squadron subsequent to this time.

(Testimony of Edwin F. Meyer.)

A. Well, just as soon as we learned that eight of the vessels would come to Puget Sound to be outfitted with supplies, Paymaster Spear instructed me to get busy and prepare requisitions anticipating their requirements, and, pursuant to that, I began the preparation of requisitions for the various items that might be called for by the ships.

Q. Did you have any conference with Paymaster Spear, your superior, concerning those matters?

A. Very frequent conferences, sir.

Q. About when, as near as you now remember?

A. From the records here, I think it was about March, the latter part of March.

Q. Mr. Meyer, you heard the testimony of Mr. Kettlewell on the witness-stand in this case in which he related to this jury, or attempted to, facts which he claimed, occurred, or conversations which he claimed occurred between yourself and him with reference to the putting over of a large requisition for zinc in the month of January, early part of January, 1908. State to the jury whether or not that statement is true or false.

A. That statement is false, for the reason that I did not know in January that a requisition would be submitted for zinc for the battleships. I did not—

Q. Did you, during the month of January, have any knowledge of the intention to outfit and supply the Atlantic Battleship Squadron at your station?
[939—887] A. No, sir, I did not know.

Q. And that fact was not brought to your knowledge, you said, until about the middle of March?

(Testimony of Edwin F. Meyer.)

A. The latter part of March, from the records.

Q. And it was then brought to your attention by your superior, Mr. Spear? A. Yes, sir.

Mr. SHIPLEY.—Mr. Meyer, Mr. Spear you referred to as the gentleman from whom you received the instructions and had these conversations, that is Paymaster Spear sitting here in the courtroom?

A. Yes, sir.

Q. Mr. Meyer, did you take any action upon the instructions given you by Paymaster Spear looking toward the preparation to meet the requirements of the Atlantic Squadron?

A. I immediately began the preparation of numerous requisitions for large quantities of supplies in anticipation of the requisitions from those ships.

Q. Just state, now, what was done fully to the jury and describe the facts and conditions just as they existed there at that time so they will know.

A. Well, we took up the question of estimating the probable requirements of those vessels—

Mr. ALLEN.—You say “we.” Who do you mean now?

A. Paymaster Spear and myself, and the other clerks in the office assisted.

Mr. ALLEN.—I see.

A. (Continuing.) In the question of provisions, that was about the first thing we took up. Then requests for clothing and small stores, then paints and oils, and metals and hardware, and articles [940—888] of every description of that kind that would probably be required by those vessels.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—You heard the testimony of Paymaster Spear that the necessity required the stocking up of very nearly every article that is used in the commercial world?

A. Yes, sir.

Q. State what the facts are of your own knowledge in that regard? A. As to the variety of articles?

Q. Yes.

A. The scope is exceedingly broad. It covers almost every conceivable article that is used generally. At that time we had thirty-two classes of naval supplies, beginning with class 1. We had anchors and chains; and, two, electrical goods of every description, running up into five, bolts and nuts of every description; brushes, cordage, drygoods, fuel,—

Mr. SHIPLEY.—Mr. Meyer, state what was done from that time on in regard to the preparation of requisitions and the fixing of—

Mr. ALLEN.—From what time on?

Mr. SHIPLEY.—From the latter part of March up to the month of April and during the month of April?

A. Well, requisitions, numerous requisitions, were submitted about that time in anticipation of these needs.

Q. Covering this entire vast area of different character of supplies?

A. Yes, sir. They all called for comparatively short delivery, from fifteen to twenty-five days delivery.

Q. What was the fact in regard to the necessity of

(Testimony of Edwin F. Meyer.)

making estimates as to the price and gathering information? Who had that work to do?

A. Oh, I had it to do, with an assistant. [941—889]

Q. Mr. Meyer, when were these different requisitions, or this innumerable quantity and character of articles being prepared and issued with reference to the preparation and issuance of requisition 438 for the purpose of the 50,000 pounds of zinc in question in this case?

A. On or about the same time, from the 25th or 30th of March until the latter part of April, we continued to submit requisitions, even into June, after the ships were actually here. Some of the items we did not anticipate.

Q. Mr. Meyer, state what the fact was as to whether or not these numerous requisitions called for the signature of Paymaster Spear, the approval of the Paymaster General and the Secretary of the Navy?

A. Well, no, a requisition doesn't become a requisition until after it is signed by the Storekeeper; that is, it is simply a piece of paper until he signs it and then it is a requisition. The Paymaster General of necessity has to approve all purchases before anyone would act upon it. The Secretary of the Navy would have to approve any purchase over \$500, that is, if the material was not to be advertised.

Q. And under what circumstances was the formality of advertising dispensed with?

A. In case of exigencies.

(Testimony of Edwin F. Meyer.)

Q. What do you mean by an exigency in that connection?

A. Where a condition such as existed at that time, where the ships would be at the navy yard, we estimated about May 15th. These requisitions were prepared along about April 1st. Under advertisement it would ordinarily take from four to six months to get it. It would be impossible to obtain these materials or to receive them at the navy yard within—before the battleships [942—890] left, therefore, waiving all advertising, was an exigency, and it was absolutely necessary.

Q. Mr. Meyer, how long did it take to deliver the 50,000 pounds of zinc that was requisitioned for under requisition 438 from the first of April, how long after the first of April?

A. May 9th delivery was made at the navy yard, sir.

Q. How long did it require to make the delivery under the contract that was initiated by the request card dated December 3d, 1907? A. Three months.

Mr. ALLEN.—How long from the time of the purchase of the award?

Mr. SHIPLEY.—From the time of the date of the card.

A. Three months after the date of the requisition, after it was prepared.

Q. One instance was three months and the other from the first of April till, you say, the 10th of May?

A. Yes, sir, 9th of May.

Mr. ALLEN.—Now, I object to that.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—In the latter case, where the delivery was made at the expiration of the period ending May 10th, was advertising dispensed with by the Secretary of the Navy?

A. Yes, sir, he waived it, the request of the Storekeeper.

Mr. ALLEN.—Request of the Storekeeper, you say?

A. Yes, sir.

Mr. SHIPLEY.—Mr. Meyer, when was it with reference to the issuance of the request card dated December 3d, 1907, that the battleship fleet, the Atlantic Squadron, arrived on the waters of Puget Sound?

A. They arrived during May, from the middle of May on, 1908.

Q. How long after the initiation of the requisition 438?

A. They arrived about six weeks after. [943—891]

Mr. ALLEN.—Will you ask him to state the ships?

Mr. SHIPLEY.—What ships do you refer to?

A. Battleships, some of the battleships.

Mr. ALLEN.—What ships?

Mr. SHIPLEY.—Just give Mr. Allen, he would like to know the names of some of those ships.

A. Well, the records would show that.

Q. Well, do you know the names of some of them?

A. "Rhode Island," "New Jersey,"—

Mr. ALLEN.—Tell me when they arrived.

Mr. SHIPLEY.—You referred to the sending out a wireless telegram. When was that?

(Testimony of Edwin F. Meyer.)

A. That was during the latter part of April or May, I think.

Q. And for what purpose?

A. Purpose of getting requisitions which we hadn't received and expected.

Q. What do you mean by getting requisitions? Explain to the jury so they will know.

A. These ships' requisitions from the various vessels of the battleship fleet. They were supposed to be furnished with supplies at Puget Sound. We couldn't furnish them with supplies without receiving requisitions from them, and we wanted to know what the articles were in order that we might assemble them for the vessels.

Q. Now, prior to that time state what information you had had in regard to a number of the battleships coming here to be supplied?

A. Well, we were told that there were sixteen battleships in the Atlantic Battleship Squadron. Eight of them would be outfitted at the Puget Sound Navy Yard, that is, we were to take care of eight of those ships, we were to furnish them with what supplies [944—892] they needed for a cruise around the world.

Q. And did that information convey definite knowledge as to the identical ship, or simply that they were to be eight in number?

A. That information gave the name of the ship.

Q. At the time you received that information and acquired the knowledge that it would be necessary to be prepared to outfit them, did you have any definite

(Testimony of Edwin F. Meyer.)

knowledge as to the particular requirements that each ship would requisition for?

A. No, sir, we hadn't.

Q. And was it for the purpose of attempting to attain that knowledge that these wireless telegrams were sent?

A. Yes, sir. We knew in a general way about what they might call for, because the allowance book gives six months' allowance of these vessels, and we could, by reference to those allowance books, tell about what they would probably require.

Q. Was that a definite means of knowledge, or merely an assistance to aid you in anticipation?

A. It was a guide, it wasn't definite. The ships frequently required more or less of the allowance.

Q. How did you determine the quantity of any article that would probably be required by these eight battleships?

A. I would either take the allowance of one ship, or the probable requirements of one vessel and multiply it by eight or ten, as the case may be. I multiplied by ten in this case, I think. When I say this case, I mean the case of the battleships.

Q. Why did you do that?

A. Because there were eight vessels in the fleet, and we were expected to outfit them, and there were a large number of other vessels in the harbor, and they were calling for supplies, and if there was a surplus it wouldn't make very much difference, because [945—893] there should be a stock on hand at the navy yard anyway.

(Testimony of Edwin F. Meyer.)

Q. What would have been the difference if there had been a deficiency if you know?

Mr. ALLEN.—Now, just a moment. That is the same question I asked him yesterday, and I object because this man is not a skilled navigator, he is not an engineer in the navy, not a man qualified in any respect any more than I am to state the effect if a battleship went out of here without proper zinc. As a matter of fact, your Honor, there is a great deal of doubt in naval circles whether this zinc is of any use for the purpose for which they use it.

The COURT.—I think the objection should be sustained. He doesn't know.

Mr. SHIPLEY.—Mr. Meyer, it was your duty to prepare these requisitions, among other things?

A. It was, sir.

Q. Note an exception to the last ruling of the Court. It was your duty to anticipate possible requirements and the necessity? A. Yes, sir.

Q. It was your duty, among other things, to place in these requisitions a quantity which would afford a sufficient supply? A. Yes, sir.

Q. For the requirement? A. Yes, sir.

Q. If, in preparing these requisitions, you had failed to requisition for a sufficient supply what would have been the result, so far as you were concerned, to the department of which you were a clerk?

Mr. ALLEN.—Just a minute. I object to it on the ground it is immaterial, irrelevant and incompetent, that this man made a numerous number of requisitions there. He didn't lose his job because

(Testimony of Edwin F. Meyer.)

they didn't have any particular kind of material on hand, and that [946—894] this is all speculation, as to what would have happened to him in any event.

The COURT.—He may answer as to what would be the effect upon him.

A. Well, inquiries would have been made of me concerning not having these articles on hand, and not having requisitioned for them. I would have been called to give a reasonable excuse for my failure to make provisions for them.

Mr. SHIPLEY.—Mr. Meyer, were you ever called to account or required to make any explanation for the failure to supply or keep on hand a sufficient supply? A. Quite frequently, sir.

Q. Were you ever called on the carpet or criticised for having a sufficient amount on hand or an over-supply?

A. Well, if there was a large excess I may have been asked to explain why it was. If there was a liberal quantity, however, it was conceded to be the proper thing to have on hand.

Q. Were you called upon to make such explanation by any of your superior officers in regard to this purchase of 50,000 pounds of zinc? A. No, sir.

Q. Were you ever called upon to account for your reason for placing estimates too low and thereby causing a delay in the furnishing of supplies to ships?

A. Yes, sir.

Q. By whom?

A. The Storekeepers at the yard, Mr. Spear and Mr. Brown.

(Testimony of Edwin F. Meyer.)

Q. Were you ever criticised or *call* to account because of assembling them too soon? A. No, sir.

Q. Mr. Meyer, you are familiar with the regulations of the United [947—895] States Navy Yard?

A. Somewhat.

Q. I will hand the witness Defendants' Exhibit "1." Calling your attention to section 900, page 211, I ask you to read subdivisions 1 and 2.

The COURT.—Of exhibit what?

Mr. SHIPLEY.—Defendants' Exhibit "1," your Honor.

The COURT.—That is the regulations of 1908.

A. These were not in force at the time that requisition was prepared.

The COURT.—Exhibit "1" is regulations of 1909 in effect 1908.

A. That other exhibit is the one.

Mr. SHIPLEY.—It has the reference to zinc, the necessity of zinc and the purposes of it.

Mr. ALLEN.—Will you read it?

Mr. MORRIS.—Let Mr. Meyer read it, he is the witness.

Mr. ALLEN.—I will stand here and see what he reads.

Mr. SHIPLEY.—Sure you can. There is no objection.

A. (Reading:) "Article 900, paragraph one: Special mention shall be made in the quarterly report of the condition *of the condition* of the boilers and the means which have been employed for their preservation.

(Testimony of Edwin F. Meyer.)

Paragraph 2: Zinc slabs shall be located in such parts of the boilers as may be directed by the Bureau of Steam Engineering. The senior engineer officer, immediately on inspection of the boilers, shall examine these zincs and note their condition in the log. Special care must be taken to insure perfect metallic contact between the zincs or sets of plates of the boiler by filing over the surface of the bolts for holding the bolt plates where these are in contact with the boiler material and the zinc. After the [948—896] zincs are secured in place the outside of the joints shall be made water-tight by cement.

Article 3: Slabs of rolled zinc shall be used, these being renewed as soon as the exposed surface is reduced by oxidation to about one-half the original area. Zincs that have become bent or distorted should, however, be removed at once as inefficient. Worn and defective zincs shall not be—”

Mr. SHIPLEY.—In making your requisitions by anticipating the probable requirement of the vessels, was it necessary to take into consideration the total number of ships?

A. Yes, sir, the probable number we had to outfit.

Q. To illustrate the matter concerning which you are just testifying, I will ask you to examine this folder, which is marked Defendants' Exhibit “A-49.” This was for identification, wasn't it? State what that is, first?

A. Exhibit “A-49” is contract 7,104, Schwa-

(Testimony of Edwin F. Meyer.)

bacher Brothers Company, Seattle, Washington.

Q. What date?

Mr. ALLEN.—Is that offered in evidence?

Mr. SHIPLEY.—It hasn't been offered yet. I want to get the data to show what is offered.

Mr. ALLEN.—What is the date?

Mr. SHIPLEY.—I will get it in, if you will let me alone.

A. October 15th, 1907, is the date of the contract.

Q. This contract was for the purchasing of what class of material for what particular purposes?

A. Well, it is annual contracts made to supply certain items of provisions during the fiscal year 1908.

Mr. SHIPLEY.—We want to offer this, your Honor, merely for the purpose of illustrating the method of arriving at the necessities of [949—897] ships, and what considerations were borne in mind by the officers of the Navy Department in arriving at the result, corroboration of the testimony that the witness has just given.

(Papers referred to received in evidence and marked Defendants' Exhibit "A-49.")

Mr. SHIPLEY.—Mr. Meyer, examine this folder and call the attention of the jury to such portions of that as bear upon this subject.

A. I am reading from a letter from the Storekeeper dated April 3d, 1908, to the contractor here, the provision contractor for that year. This is to Schwabacher Brothers, Company, 300 Occidental Avenue, Seattle, Washington: "I am just in receipt of information that the U. S. S.—" Well, the first

(Testimony of Edwin F. Meyer.)

paragraph there, I better read that too— “Refer-
ring to my letter of the 27th ult., Number 17,104, or-
dering 100,000 pounds of flour, in accordance with
specifications to be delivered on or before Decem-
ber 10th, please increase the quantity called for to
175,000. I am just in receipt of information that
the U. S. S. Maine will require about 60,000 pounds
of flour when about to leave this yard for a return
cruise.”

Mr. ALLEN.—I call your attention to those nota-
tions (showing).

A. *This* notations were made after this letter was
written.

Mr. ALLEN.—I submit, if he reads this in evi-
dence he should read every notation.

The COURT.—Yes.

A. (Reading notations and balance of letter.)

Mr. SHIPLEY.—Mr. Meyer, are the vessels re-
ferred to in that letter the vessels which you have
spoken to the jury of under the designation of the
Atlantic Battleship Fleet?

A. Yes, sir.

Q. And the reference in the letter “having just
received [950—898] information concerning the
Maine,” to what does that relate?

Mr. ALLEN.—Now, I object to that, your Honor.
That is leading, to have this man read into that let-
ter a conclusion which isn't in the letter. The let-
ter speaks for itself. This man didn't write the let-
ter so far as I know, and I submit that he hasn't any
right to read into communications which do speak in

(Testimony of Edwin F. Meyer.)

their own way something which serves his particular purpose.

A. I wrote the letter.

Q. You dictated that letter yourself?

A. Yes, sir.

Mr. SHIPLEY.—The question which I asked, what the reference is, to what the name is there, “Just having received information concerning the ‘Maine.’ ”

A. Well, it doesn’t show here in what form that information is. It is some other folder of that office.

Q. Is that shown in this folder (showing)?

A. No, sir.

Q. Is there some other folder in which that is shown?

A. The “Maine” requisition for provisions would show that, I think.

Mr. MORRIS.—Mr. Kerr will get it.

A. No, sir, that hasn’t been brought over here at all.

Mr. SHIPLEY.—Is that one of the requisitions you have asked for in this case?

A. No, sir, didn’t inquire for it.

Q. The “Maine” was what?

A. A battleship,—a member of the Atlantic Battleship Squadron.

Q. Was that ship on the waters of Puget Sound at the time that letter was written? A. No, sir.

Q. Of what fleet was she a member? [951—899]

A. Atlantic Battleship Squadron.

(Testimony of Edwin F. Meyer.)

Q. Do you know what the source of the information was that is referred to in that letter?

A. Information from the "Maine." I don't know just what form it was in.

Q. You have no present memory of that?

A. No, sir.

Q. Now, do you know when the "Maine" arrived with reference to that date?

A. No, sir. Sometime after the middle of May. I don't know as to the date of arrival of the respective ships.

Q. Mr. Meyer, calling your attention to Plaintiff's Exhibit "11" in this case, documents introduced by the Government, I will ask you to examine those papers for the purpose of refreshing your memory, and ask you, if you can, to state from those papers the date of the arrival of the "Maine"?

A. This is a record that is not—doesn't belong to the Storekeeper's office; record of the Commandant's office. I can read from here the date of arrival of these ships.

Mr. SHIPLEY.—What is the date of the arrival of the "Maine"?

Mr. ALLEN.—Your Honor, the record speaks for itself. If that is in evidence the jury could see it.

Mr. SHIPLEY.—What is the date on that showing the arrival of the "Maine"?

A. The "Maine" was one of the vessels that did not come.

Mr. SHIPLEY.—Didn't the "Maine" come, as a matter of fact?

(Testimony of Edwin F. Meyer.)

A. It may not have. The "Maine" and the "Alabama" was docked at Hunter's Point. The ships were changed by a subsequent order.

Q. Speak louder.

A. The destination of the ships that were to arrive at Puget Sound [952—900] was changed later and three ships substituted for the three that were intended to come here in the first place.

Q. And at the time this letter was written in April, you were anticipating that the "Maine" would be one of the ships that would be supplied at this station? A. Yes, sir.

Q. And this requisition for the purpose of this 600,000 pounds of flour, or thereabouts, was made to supply what anticipated demand?

A. Battleship fleet, the vessels of—

Q. What number of ships?

A. Eight, there were eight coming. We made a computation on the basis of ten in order to have a surplus.

Mr. SHIPLEY.—Mr. Meyer, I will ask you this question: What is the date of the preparation of the requisition for the purchase of the 50,000 pounds of zinc, says, compared to the date of the requisition for this large quantity of flour for eight battleships that were expected?

Mr. SHIPLEY.—I will ask you this question, Mr. Meyer, whether or not the motives which inspired the preparation of this requisition for flour were the same motives that inspired the preparation of requisition 438?

(Testimony of Edwin F. Meyer.)

A. Yes, sir, I was carried by exactly the same motives.

Mr. SHIPLEY.—At that time were you engaged in any conspiracy with the Schwabacher Company to defraud the United States Government out of this flour contract?

Mr. ALLEN.—Object to that as immaterial, incompetent and irrelevant.

The COURT.—Objection sustained.

Mr. SHIPLEY.—Exception. [953—901]

Q. Mr. Meyer, showing you Plaintiff's Exhibit "8," this zinc stock card offered in evidence by the Government, I will ask you if that is the card concerning which the witness Lockwood testified?

A. It is, yes, sir.

Q. Do you find on the card the item showing "limit of stock," or "minimum of stock," whichever it is, "4,000 pounds."

A. Limit of stock, 4,000 pounds, yes, sir.

Q. Explain fully to the jury what that means and what purpose that subserves.

A. Limit of stock—this card is kept with the material in the navy yard, that is, where the material is stored; this card is placed there for convenience of determining the quantity on hand, and so forth. And on each of these cards in store there is placed this stamp "Limit of stock," and there is inserted the minimum quantity; that is, when the stock reaches that minimum the storeman should notify the requisition office that the stock has reached that minimum and it should be replenished, and there-

(Testimony of Edwin F. Meyer.)

upon the requisition office would prepare a requisition to replenish that stock. That was the idea of the minimum.

Q. State whether or not that quantity placed on that card was, to any intents and purposes, to serve as a maximum? A. No, sir.

Q. What was the fact as to whether or not that specification of 4,000 pounds afforded any limitation to the quantity which might be purchased or carried in stock?

A. That had no bearing on it whatever, on the quantity. The quantity was determined by the probable requirement, probable call.

Q. Now, to what date does that card relate, what period of time, I mean? [954—902]

A. March 3d, 1908, is the first date here—no, December 30th, 1907, is the first date, sir.

Q. Covers the period from December what date?

A. 30th, 1907.

Q. To what date? A. October 9th, 1908.

Q. Can you tell, or do you have any way of knowing at what time or period that limit, that minimum limit of stock of 4,000 was put on there?

A. No, sir.

Q. I will ask you whether you know whether or not the quantity of 4,000 pounds was a reasonable limit of stock during the period of April, May and June, 1908, under the conditions that existed at the Puget Sound Navy Yard during those three months?

A. That minimum would be ridiculous at any point, sir.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—Ridiculous, you say?

A. Yes, sir, ridiculous.

Mr. SHIPLEY.—Why?

A. Too low, absurd; one ship would take over 5,000 pounds, and it would take months to replenish the stock; it therefore follows that a minimum of 4,000 pounds would be ridiculous.

Q. Did that card at that time impose any limitations upon you or your authority in the preparation of requisitions?

A. Absolutely no, sir; I paid no attention to that at all.

Mr. ALLEN.—You paid no attention to it?

A. Paid no attention to it, no, sir.

Mr. SHIPLEY.—Were you required, under the practice and regulations of the Storekeeper's office, to be controlled by any minimum as shown on that card at that time?

A. Not under the circumstances existing at that time, no, sir. [955—903]

Q. Did you confer with the storeman who had charge, or warehouseman, when you were initiating requisitions, as to the probable requirements of the battleship fleet? A. No, sir, I did not.

Q. Was it your duty to have done so?

A. No, sir.

Q. You heard the question propounded by Mr. Riddell, I believe, to Mr. Lockwood, in which Mr. Lockwood was asked if he had been consulted by you at that time in the preparation of this requisition for 50,000 pounds? A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. You heard that testimony? A. Yes, sir.

Q. Was it any part of your duty to consult Mr. Lockwood, or your then warehouseman in the Storekeeper's office as to the amount of zinc you should requisition for the coming battleship fleet?

A. No, sir.

Q. Showing the witness Plaintiff's Exhibit "5," the photographic copy of requisition 438, Mr. Meyer, that requisition bears upon its face some writing in regard to advertising. To begin with, that is the requisition involved in this indictment in which you are standing trial? A. Yes, sir.

Q. For the purchase of 50,000 pounds of zinc?

A. Yes, sir.

Q. Calling your attention to some writing on the face of that requisition in relation to advertising, read that paragraph.

A. "Required"—meaning the 50,000 pounds of zinc—"to fill requisitions from the Atlantic Battleship Squadron. Request the waiving of advertisement and purchase through the Navy Pay Office, [956—904] Seattle, Washington."

Q. For what purpose was that paragraph inserted in that requisition?

A. This is my handwriting, sir.

Q. Sir? A. This is my handwriting.

Q. In your handwriting. For what purpose was it placed there?

A. In order to call the officers' attention to the fact that this was a requisition to fill the requirements of the battleship fleet, and asking, in view

(Testimony of Edwin F. Meyer.)

of its being in excess of \$500, that the formality of advertising it be waived on account of this exigency.

Q. And that was written on there at what time?

A. After the preparation of the requisition.

Q. And when with reference to its signature by Paymaster Spear? A. Prior to his signature.

Mr. SCHLESINGER.—You say prior to his signature?

A. Prior to his signature. The requisition, after being prepared, was placed on my desk. Appreciating the urgency, the exigency, I inserted that in my handwriting and put it on his desk.

Mr. SHIPLEY.—In connection with that same exhibit I hand you Defendants' Exhibit "A-13," open purchase requisition 490, series of 1908, and I will ask you what date that requisition 490 was prepared?

A. April 15, 1908.

Q. And by whom?

A. By the General Storekeeper's requisition office.

Q. For what purposes?

A. For stock, Atlantic Battleship Squadron.

Q. Calling your attention to the face of that—

Mr. ALLEN.—Is that in evidence now? [957—905]

Mr. SHIPLEY.—I don't know. I assumed it was on account of its being marked as it is.

Mr. ALLEN.—We move to strike that out until it is.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—This is one of the Storekeeper's files?

A. Yes.

Mr. SHIPLEY.—We will offer this in evidence.

The COURT.—Received.

(Papers referred to received in evidence and marked Defendants' Exhibit "A-13.")

Mr. SHIPLEY.—When, with reference to the preparation of requisition 438, was the requisition which I have just handed you prepared?

A. Fifteen days later?

Q. Was that prepared in anticipation of any requirement, and if so, what?

A. In anticipation of the requirements of the Atlantic Battleship Squadron.

Q. Is there anything on that requisition showing the purposes for which it is prepared?

A. Yes, sir, there is my writing there.

Q. Read the writing to which you refer, and state what kind of ink it is written in.

A. In red ink, "Required for issue to the Atlantic Battleship Squadron; request waiving of advertisement?"

Q. Compare the requisition in the particulars you have just mentioned with requisition 438.

Mr. ALLEN.—In what way?

Mr. SHIPLEY.—In regard to this same clause waiving—read the clause on the other requisition 438.

Mr. ALLEN.—I submit the requisition speaks for itself.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—I asked him to read the comparative clause on [958—906] requisition 438.

A. “Required to fill requisitions from Atlantic Battleship Squadron; request waiving of advertisement and purchase through Purchasing Pay Office, Seattle, Washington.”

Q. That is requisition 490, is it not?

A. Yes, sir.

Q. In the case of requisition 490, state whether or not the same purposes actuated you that did in the preparation of requisition 438?

A. Identically the same, sir; the result was the same.

Q. Was this requisition 490 passed up to Paymaster Spear for his signature? A. Yes, sir.

Q. Containing the clause which you just read, “Waiving advertisement”? A. Yes, sir.

Q. What was done in the case of 490 after that requisition was signed by the Paymaster?

A. It was sent to the Bureau of Supplies and Accounts and by the Paymaster General approved for purchase through the Navy Pay Office, Seattle.

Q. Was advertising in fact dispensed with, if you know? A. It was, yes, sir.

Q. How was the article requisitioned for actually purchased? A. After competition.

Q. In the usual form, by calling for proposals in the Navy Pay Office? A. Yes, sir.

Q. The same as was done in requisition 438?

A. Identically the same.

Q. Has there ever at any time been any charge

(Testimony of Edwin F. Meyer.)

made against you of [959—907] any fraudulent dealing or conduct in reference to requisition 490?

A. No, sir.

Q. And you say they were prepared for identically the same purposes and identically the same manner?

A. Identically the same in both instances.

Q. In the endorsement of the request that advertising be waived, does that carry with it the waiving of competitive bidding? A. Indeed not, sir.

Q. Does it have any bearing upon that question?

A. No, sir, merely waives the advertising of this by the Bureau, by the printing of proposals and the sending it broadcast over the country.

Q. Now, why was that done?

A. Because it took too much time. It requires from four to six months to get material after the requisition is prepared if the procedure of advertising is resorted to.

Q. I will call your attention to a folder, open purchase requisition 179, series 1910—no, that is 1911, I thought that was a cipher, I guess that is 1911, marked Defendants' Exhibit "O" in the former trial—no, it is Defendants' Exhibit "O" in this trial for identification, and ask you to examine the contents of that folder and state whether or not there is in that folder a letter from Paymaster Spear—

Mr. ALLEN.—Just a moment. That hasn't been admitted in evidence, I think.

Mr. SHIPLEY.—The offer, Mr. Allen, is renewed with reference to Defendants' Exhibit "U," con-

(Testimony of Edwin F. Meyer.)

tract number 08188, date, January 11, 1910.

Mr. ALLEN.—Renew the objection, unless your Honor thinks the witness is prepared to state he wrote the letter. It has been [960—908] admitted, I understand, Mr. Shipley; go ahead.

Mr. SHIPLEY.—Calling your attention to that folder and its contents which you now hold in your hand, which is marked Defendants' Exhibit "U," state what the subject matter of that transaction was?

The COURT.—This is already in evidence before the Court and jury. If there is anything to which you desire to call their attention, all right.

Mr. SHIPLEY.—That is the purpose, just preliminary.

A. This is requisition, a contract, rather issued or made with Roger B. German, New York, for bolts and nuts.

Q. Now, calling your attention to a particular portion of that folder, do you find a letter written by the General Storekeeper of the Navy Yard at Puget Sound?

A. Yes, sir, to the Bureau of Supplies and Accounts, Washington, D. C.

Q. Read that letter?

A. It is dated February 7th, 1910. "Sir: In connection with the Bureau's letter 106982 of November 20th, 1909, relative to the apparently excessive stock carried at this yard, it is desired to bring the following transactions to the Bureau's attention as indicating a certain length of time required to re-

(Testimony of Edwin F. Meyer.)

plenish a certain stock of materials that could not be obtained in large quantities from the warehouses of local dealers.

Naval Supply Fund requisition number 52 for bolts and nuts was submitted to the Bureau under date of September 30th, 1909. The material was found on Schedule 1921, dated December 7th, 1909. Purchase was made under contract 12,529, dated January 7th, 1909, for delivery within 120 days, or more than six months after the date of the request for stock. [961—909]

Naval Supply Fund requisition number 62 for bolts and nuts was submitted to the Bureau under date of October 22d, 1909, for delivery within 60 days after date of contract. The material was called for in schedule 1958, December 14, 1909, and purchase was made under Bureau Order 8188, dated January 7th, 1910, for delivery within ninety days from January 8th, 1910, or five and a half months after the request was made.

There is no doubt an urgent demand on the part of these bolts for work on the 'Tennessee' and 'Washington,' and, judging from the allowances for delivery in the above cases, it would be very difficult to obtain any considerable quantity in the local market or for immediate shipment from the east.

These things are not considered exceptional, as many kinds of material used by the navy that are not carried in stock by dealers to the same extent that bolts and nuts are carried by them, and cannot be manufactured in a less time. While this depart-

(Testimony of Edwin F. Meyer.)

ment will continue its endeavors to reduce stock in accordance with the Bureau's instructions, any system which limits requests for purchase to only actual known demands will necessarily result oftentimes in the liability of the General Storekeeper to meet the demands of the Manufacturing Department for material required for urgent work that has not been foreseen and which requires material ordinarily obtained from stock, and in quantities in excess of the ordinary issues.

Of course, it is aimed to maintain a minimum of one of three months supply of stock for which there is a demand at all times, but when the issues of articles are excessive and unforeseen and the stock cannot be replenished in less than four to seven months, often the ordinary demands cannot be met, which naturally brings forth sharp criticism from the Manufacturing Department. [962—910]

The Puget Sound Navy Yard is somewhat unfortunate in being located some 3,000 miles from its market, but even at that it is believed that it should not take six months to secure a stock of articles; although, if such is the case, the Bureau will find a strong tendency on the part of this yard to call for a considerable more stock than would be demanded could it be assured of delivery in sixty to ninety days, very respectfully, Paymaster, U. S. Navy, Storekeeper, Bureau of Supplies and Accounts, Navy Department, Washington, D. C."

Mr. ALLEN.—February 7th, 1910?

A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—Isn't there a more recent one than that? That is February 7th.

Mr. SHIPLEY.—Mr. Meyer, state to the jury whether or not the same conditions recited in this communication addressed by Paymaster Spear to the Bureau of Supplies and Accounts at Washington, D. C. as obtaining in the period covered by this letter, obtaining during the period from December 1st, 1907, to June 1st, 1908?

A. Yes, sir, to the best of my knowledge, the same condition obtained.

Q. Now, Mr. Meyer, at the time you prepared this requisition 490 and the requisition 438, which is involved in the indictment under which you are now on trial, how long after that time, to the best of your present recollection, was it that the battleship fleet in fact arrived, or portions of it?

A. They began to arrive about the middle of May, and continued to arrive, I think, in squads until the first of June sometime.

Mr. SHIPLEY.—Do you remember at this time what period of time was allowed for the outfitting of the fleet here at this navy yard? [963—911]

A. No, I do not. They were to sail the first of July, sometime around there.

Q. Mr. Kettlewell testified in this case that you had a conversation with him in January to the effect that you were going to prepare large requisitions for large amounts, and that you were going to hold them for as long a time as possible. State whether that is true or false. A. That is absolutely false, sir.

(Testimony of Edwin F. Meyer.)

Q. Mr. Meyer, after you received your instructions from Paymaster Spear, in the latter part of March, to assemble a stock of supplies sufficient to answer the needs of this battleship fleet, state when you commenced or entered upon the work of the preparation of the requisitions.

A. Immediately thereafter.

Q. And continued that during what length of time? A. During the time the ships were here.

Q. During what period would that be?

A. Well, up—during April, May, June.

Q. And one of the first steps of supplies that you acted upon was the zinc supply?

A. That was one of the first, yes, sir.

Q. Being the 50,000 pounds counted upon in the indictment in this case? A. Yes, sir.

Q. Were you influenced by any fraudulent purpose or design in that connection?

A. No, sir, it was for the sole purpose of having on hand an article which I knew the ships would require.

Q. Mr. Meyer, you have there, I believe, at hand requisition 438, have you not? [964—912]

A. Yes, sir, have the photographed copy of it.

Q. What is the amount called for in that requisition? A. 50,000 pounds.

Q. What estimate was placed on that requisition?

A. I haven't the copy of the requisition here showing the estimate.

Q. That doesn't show the estimate?

A. No, sir.

(Testimony of Edwin F. Meyer.)

Q. Do you know from your own knowledge?

A. 12½ cents.

Q. What was the prevailing price of zinc in the local market at that time, if you know?

A. 12 cents, as far as naval purchases were concerned, sir.

Mr. SHIPLEY.—Was the Paymaster General of the United States Navy and the Secretary of the United States Navy informed as to the local prices of zinc for the needs of this navy yard at that time?

Mr. SHIPLEY.—Mr. Meyer, you have just been examined with reference to requisition 490. That is exhibit—one of those you have there?

A. No, sir, I haven't it here.

Q. What is that exhibit, "72" or "79"?

A. This is exhibit "U" I have here. 490 is exhibit "79," I think.

Q. Examine this folder and state whether the contents of that folder shows that the Secretary of the Navy of the United States and the Bureau of Supplies and Accounts had knowledge of the prices of zinc in this locality accessible to the use of this navy yard?

The COURT.—Is that exhibit "A-79"?

A. No, sir, Plaintiff's Exhibit "79." [965—913]

Mr. SHIPLEY.—Plaintiff's Exhibit "79" offered by the gentleman himself.

Mr. ALLEN.—I now object, your Honor, to the question and answer from this witness for the reason that there isn't any evidence here which will disclose that this witness is any more qualified to state

(Testimony of Edwin F. Meyer.)

what knowledge may or may not have been in his mind—

The COURT.—Let me make this observation: Read that exhibit, if there is anything in there you want, and let the jury determine.

Mr. SHIPLEY.—I am asking him if those papers bear any record of anything of that kind. He is an expert in this office.

The COURT.—The objection to the form of the question is sustained, as to what it shows. The record is in evidence, and he can read any part of it, or all of it, to the jury.

Mr. SHIPLEY.—Exception.

Q. Mr. Meyer, if there is anything in that folder and those records which indicate or bear evidence of the action of the Secretary of the Navy, or of the Bureau of Supplies and Accounts, with reference to the price for zinc in this locality accessible to this navy yard, kindly read to the jury.

A. Under date of May 11th—this is the endorsement of Bureau of Supplies and Accounts.

Q. What year? A. 1908.

Mr. ALLEN.—What is the date? A. 1911, sir.

Q. 1908.

A. 1908. "Purchasing Pay Officer, Purchasing Pay Office, Seattle, Washington, submits bids received under Naval Supply Fund requisition 444 for rolled sheet zinc. Respectfully submitted to the Secretary of the Navy. It is recommended that the Bureau be [966—914] authorized to wire award of this zinc to the lowest bidder, the W. A. Corder

(Testimony of Edwin F. Meyer.)

Company. E. B. Rogers, Paymaster General, U. S. Navy.

May 12th, 1908, Bureau of Supplies and Accounts, submits bids received under Naval Supply Fund requisition number 444, Navy Yard, Puget Sound, Washington,—”

Q. Does or does not that record show the price of zinc in this market which was authorized to be purchased by the Secretary of the Navy and the Bureau of Supplies and Accounts, as shows in that folder?

A. Yes, sir, the price is given here.

Q. What is the price? A. \$12.45 per hundred.

Q. And that was at the same period that the 12½ cents was inserted in the requisition 438, practically? A. Practically the same time, yes, sir.

Mr. SHIPLEY.—Mr. Meyer, calling your attention to requisition 438, which is involved in this case, I will ask you whether the Paymaster General of the United States Navy authorized that particular purchase for 50,000 pounds at 12½ cents?

A. Yes, sir.

Q. Did or did not the Secretary of the United States Navy authorize the particular purchase, 50,000 pounds, in this same requisition at 12½ cents?

A. He did, sir.

Q. In the preparation of this exhibit 438, state to the jury how that was prepared and by whom?

A. It was prepared, as all requisitions in the Storekeeper's Office, that is, in the requisition office, by either myself or one of the clerks in the office. This particular requisition, [967—915] I think, was

(Testimony of Edwin F. Meyer.)

prepared by one of the clerks in the office.

Q. Why do you think so, Mr. Meyer?

A. Well, it bears the initial of W. K. S., who was then a clerk, Mr. Spaulding. It says "None of the articles called for on the requisition is in store."

Q. What were the duties of Mr. Spaulding at the time that requisition was prepared?

A. He was assistant requisition clerk.

Q. Acting under whom? A. Acting under me.

Q. And how was the work, the requisition work, done by him initiated; what started him in motion?

A. Well, either a requisition that came through me to him.

Q. In what form would it be submitted?

A. Memorandums or telephonic communications.

Q. What form would you submit to him, the memorandum?

A. Well, I would either tell him by word of mouth or by memorandum, pencil memorandum.

Q. And in your work of your office was it customary for you to do the actual physical work of the drawing up of this requisition?

A. No, sir, I couldn't do that.

Q. Why not? Explain to the jury the facts.

A. There was entirely too much detail about them. There were assistants in the office, and I had so many other things to do that the actual performance was by another clerk.

Q. Who were some of these other clerks who prepared this actual physical work under your direction?

(Testimony of Edwin F. Meyer.)

A. Well, we had a clerk, A. C. Reed, at one time, Mr. Spaulding at another. I think Mr. Spaulding relieved Mr. Reed. [968—916]

Q. Who was doing that work at the particular time of the preparation of requisition 438?

A. Mr. Spaulding.

Q. And when Mr. Spaulding did this work what was the custom in regard to his initialing his work?

A. Well, he would place a stamp on the requisition and turn it over to me, and under that stamp he placed his initials, initialed the requisitions that he prepared, but on the requisitions that came in from the other yard departments—

Q. Does that stamp appear, or initial appear, on this requisition? A. Yes, sir.

Q. And what does that indicate?

A. It says, "None of the articles called for on this requisition are in store."

Q. I mean, what does it indicate with reference to the preparation of the requisition? A. W. K. S.

Q. What does it indicate with reference to who prepared the requisition, the physical work of it?

A. Well, it indicates he might have done it, or some other department may have prepared it.

Q. Either that it was prepared from some other department or that he had done it? A. Yes, sir.

Q. Now calling your attention to the contents of that requisition, specifying the quantity, the price and the extended total, what does that requisition show?

(Testimony of Edwin F. Meyer.)

A. I would have to have the folder here. It shows—

Q. Well, you are familiar with the records. Are any of those things shown on this copy? [968½—917]

A. No, the extension isn't shown on the original.

Q. Well, what portions of the things I have mentioned do appear? A. On this copy?

Q. Yes.

A. The quantity and the material, the specifications, the time of delivery.

Q. And the unit price?

A. No, sir, the unit price isn't shown on it.

Q. Isn't shown on this copy. What is this, a copy of the original? A. Yes, sir.

Q. And that goes to what department?

A. It lodges finally with the Treasury Department.

Q. Now, the other copies, besides this original, where do they go?

A. One copy will remain in the office, the office file; another copy, an advance copy, is sent to the Purchasing Pay Office here and to the Bureau of Supplies and Accounts.

Q. And before any of these copies were sent out, either the original or any of the copies, where did they go from your desk?

A. To the Storekeeper's desk.

Q. Who was the Paymaster at that time?

A. Paymaster Spear.

Q. Mr. Meyer, have you made an examination of

(Testimony of Edwin F. Meyer.)

the different copies of this requisition which have been introduced in evidence in this case?

A. I have.

Q. Calling your attention to the matter of putting the quantity of stock purchased, the unit price and the extensions of the total sum, on all the copies, is it customary to have those three matters [969—918] shown?

A. Well, they are shown on all copies with the exception of the price. That is shown only on the—that is shown—that is not shown on the original, but shown on all the other three copies.

Q. Shown on all but the original?

A. Not the three things. The price is the only thing not shown on the original.

Q. I say, all the copies do bear it? A. Yes, sir.

Q. On which copies that have been introduced in evidence is it that the discrepancy exists that has been referred to by the witnesses in this case?

A. All copies, apparently.

Q. All of the copies. Was your attention ever called to that fact prior to this trial?

A. No, sir; I don't recall it.

Q. What, if anything, do you know about that?

A. Only the matters brought out here, that the extension was made on the requisition \$625.

Q. During the entire period of your connection with the Puget Sound Navy Yard, subsequent to the first day of March, was your attention ever called by the Bureau of Supplies and Accounts, the General Storekeeper or any other superior in the Navy Yard

(Testimony of Edwin F. Meyer.)

Department, to the fact of the discrepancy between the amount six hundred and twenty-five appearing on some of these copies, and \$6,250, for the 50,000 at 12½ cents would total?

A. No, sir; I don't recall anything said about it.

Q. Were you ever called upon by anybody to explain why such a discrepancy, if any, did exist?

A. Not that I am aware of, sir. [970—919]

Mr. ALLEN.—Not that you are aware of?

A. Not that I am aware of.

Mr. SHIPLEY.—You would know if that had been made?

A. I would remember it, I think.

Q. Mr. Meyer, about how long have you been familiar with the procedure in the Navy Department of the United States?

A. Since 1896. I entered the service—I wasn't familiar at that time, but I grew familiar from time to time.

Q. During that period of sixteen years, did you become familiar with the system of accounting that prevailed so far as the Storekeeper's Office was concerned, and its connection with the departments at Washington? A. Yes, sir.

Q. Do you know whether or not it would have been possible to have taken through the departments at Washington, and the Bureau of Supplies and Accounts, a purchase of 50,000 pounds of zinc at 12½ cents per pound, at a total of \$625, a balance against that, a disbursement of \$7,400.

A. Why, no, sir; hardly.

(Testimony of Edwin F. Meyer.)

Q. What would have been the result, so far as the General Storekeeper's office, and you in particular, being called to account if that had been done?

A. There would have been no disbursement.

Q. Would or would not you have been called upon to account if that condition had existed?

A. No, sir; there would never have been a disbursement of that article on any approval of only \$625.

Q. Mr. Meyer, have you ever received any complaint from Paymaster Spear as to his having been called to account for any irregularity in connection with any discrepancy in the amount as appearing upon [971—920] this exhibit? A. No, sir.

Q. Has there been any of the officers of the Accounting Department of the United States Navy brought out here as witnesses to testify in this case as to any discrepancy, or any irregularity, occasioned by reason of a voucher being put through for \$7,400 against an authorized expenditure of \$625?

A. No, sir; I am not aware of any.

Mr. SHIPLEY.—Mr. Meyer, did you have anything to do with the purchase of this particular zinc?

A. I did not, sir.

Q. Did you or did you not have any knowledge—or when did you obtain the first knowledge as to who had received the contract?

A. When the award was made we received a copy of it from the Pay Office. The folder will show the date of receipt of that in the Storekeeper's Office.

Q. Now, prior to the reception of the award, or the copy which was filed in your office, did you have any

(Testimony of Edwin F. Meyer.)

knowledge or any information from any living soul as to who was to receive that contract, or did receive it? A. Had no information whatever, sir.

Q. Had you ever, prior to that time, had any conversation with Mr. Kettlewell, Mr. Corder, Mr. Goldberg, or any other person, in regard to the letting of that contract, or who was to receive the contract?

A. No, sir.

Q. What connection, if any, did you have with the fixing of the time of delivery on requisition 438?

A. It was fixed by me.

Q. You mean by that on the requisition? [972—921] A. That is, the time was fixed, yes.

Q. I say, on the requisition? A. Yes, sir.

Q. Did you have anything to do with fixing or determining the time of actual delivery under the contract? A. No, sir.

Q. When was your first knowledge that the time to which the contractor was limited had been changed from the time as specified by you in the requisition itself?

A. The first knowledge I had is when I was looking over those papers in connection with these indictments.

Q. When?

A. Sometime here about a week or two before this trial started.

Q. Did you know at any time prior to the commencement of this trial that that contract had been let for the 50,000 pounds of zinc requiring a delivery in five days? A. No, sir, I did not.

(Testimony of Edwin F. Meyer.)

Q. Was that subject matter ever discussed between yourself, Kettlewell, Goldberg, Corder or anyone else?

A. Never discussed by me, sir, with any one.

Q. Why did you fix the time of delivery under this particular requisition at fifteen days?

A. Well, we were expecting—

Q. I mean fifteen days after the award?

A. Well, we were expecting the ships to arrive here sometime in May. We wanted to have a stock of material on hand before their arrival, as it would be a physical impossibility for us to handle all of this material that we were going to call for at one time. We were asking 400 tons of supplies, and the facilities of the yard [973—922] would not take care of such a large quantity. We had the deliveries covering quite a period. And in this particular instance the requisition was dated on or about—on April 1st. I stated in the requisition it was to be delivered within fifteen days after date of award, that is, fifteen days after the contractor had received the order, allowing time for shipment from Portland, or San Francisco, or mayhap, from the east, if it was necessary. That would—allowing five days, or six days, for the requisition to get to Washington, and about six days to be returned, would be about twelve days, and the number of days for proposals to be given out and distributed, and bids to be received would probably take twenty or thirty days I figured. Well, there would be about fifteen days after that, would put the delivery of the material

(Testimony of Edwin F. Meyer.)

on the navy yard sometime during May, maybe about the middle of May, permitting it to be inspected, and so forth, prior to the probable call of these ships.

Q. Prior to the time of your preparation of this requisition of 50,000 pounds, did you have, either during the month of January, as testified to by Kettlewell, or any other time, have any conversation with Mr. Kettlewell about your intention to issue a requisition for 50,000 pounds of zinc, or any large quantity.

A. No, sir. As I stated, I did not know until the latter part of March the requisition would issue.

Q. I say, any time prior to April 1st?

A. No, sir.

Q. At any time prior to your preparation of this requisition for 50,000 pounds, did you ever have any conversation with Mr. Goldberg with reference to your intended issuance of a requisition for that amount, or any other large amount? A. No, sir.
[974—923]

Q. Did you ever at any time have any conversation with Mr. Goldberg in which you gave him any information as to your intention to issue requisitions in the future? A. No, sir.

Q. Mr. Meyer, you heard the testimony of Mr. Kettlewell in this case relative to his turning down a certain voucher under requisition number 193, Plaintiff's Exhibit "17," by returning the voucher to the Commandant and calling attention to excess delivery. State to the jury what you know about that transaction.

(Testimony of Edwin F. Meyer.)

Mr. ALLEN.—That was in the early part of January, 1908?

Mr. SHIPLEY.—Yes.

A. Why, I only recall that which is shown in the exhibit here, Mr. Shipley. Requisition 193 calls for 4,000 pounds of zinc plates for boilers. The estimate is 12 cents. It was purchased from the Great Western Smelting & Refining Company at 16 cents.

Q. Who prepared that requisition, Mr. Meyer?

A. The Storekeeper's Office, sir.

Q. Is there anything in there bearing upon the question of who determined or suggested the estimated price?

A. No, sir, there is nothing there showing that directly. It was done in the Storekeeper's office under my direction.

Mr. ALLEN.—Under your direction, you say?

A. Yes, sir.

Mr. SHIPLEY.—What was the date of that requisition? A. December 4, 1907.

Q. You state that the estimate on that was what? A. 12 cents.

Q. And the award was made at what price?

A. 16 cents.

Q. Is there anything there showing how that discrepancy, or why [975—924] it was brought about, that variation?

A. I saw in one of the folders, the Pay Office folder—

Mr. MORRIS.—19 or 20? A. It must be 18.

Mr. SHIPLEY.—He says it must be 18.

(Testimony of Edwin F. Meyer.)

A. "18" is the exhibit number, I think, covering that.

Q. The voucher under that requisition would appear in which folder?

A. Well, it would appear in either folder, in both folders.

Q. It it in that one?

A. The record of the voucher?

Q. What is that?

A. The record of the voucher?

Q. Well, there is a reference here to an endorsement, or something, in regard to excess delivery.

A. Well, that would show in both folders. The note I said was in this folder is in Mr. Kettlewell's handwriting.

Q. How is that?

A. The note is here in Mr. Kettlewell's handwriting. You asked why it was made at 16 cents?

Q. Yes.

A. I said there was a note in one of these folders here in Mr. Kettlewell's handwriting.

Q. You find it? A. Yes, sir.

Q. Will you read it? A. Yes, sir.

Mr. ALLEN.—What are you reading from?

Mr. MORRIS.—Plaintiff's Exhibit "18."

Mr. ALLEN.—What is that, zinc? [976—925]

A. Yes, sir.

Mr. ALLEN.—That is one of December 5th?

A. Yes, sir, proposal of December 5th, 1207, Mr. Forbes states by phone that one lot of 4,000 pounds must be delivered at once and adv. price will

(Testimony of Edwin F. Meyer.)

be approved. Initial "K," and note, "C-192-N. S. F."

Mr. ALLEN.—You recognize that writing, do you, as Kettlewell's? A. Yes, sir.

Mr. SHIPLEY.—The percentage of increase above the estimated cost in that case was what?

A. Well, as 12 is to 16, over 25 per cent.

Q. By what authority in that case is the estimated cost of 12 cents exceeded?

A. The authority of that memo there is the only authority I find here, that memo I just read, that the Commandant would approve it.

Mr. VANDERVEER.—What was the lowest bid there?

Mr. SHIPLEY.—Just read the proposal and what was done in regard to it.

A. (Reading:) W. A. Corder Company bid 10 $\frac{1}{4}$ cents on that for five-day delivery; the Great Western Smelting & Refining Company bid 16 cents for immediate delivery; the Seattle Hardware Company bid 8 $\frac{1}{2}$ cents for eight days delivery; the Pacific Engineering Company bid 12 $\frac{1}{2}$ cents for five days delivery; the Pacific Metal Works, "Not prepared to bid."

Q. Did the Commandant of the navy yard authorize the purchase of that zinc at 16 cents per pound after you had estimated the price of 12 cents?

A. If this authority here might be taken as the Commandant's authority I am not at liberty to say, sir. [977—926]

Q. How much zinc did the contractor deliver to

(Testimony of Edwin F. Meyer.)

the navy yard, as shown by the Inspection Call there?

A. The contractor billed, or invoiced, 5,933 pounds.

Q. What was done by the Board of Inspection, as shown by that folder?

A. The Board of Inspection accepted the entire quantity.

Q. Who composed that Board of Inspection, as disclosed by the folder?

A. Z. E. Briggs, Lieutenant, U. S. Navy, Jonathan Brooks, Paymaster, U. S. Navy.

Q. Did you have anything to do with that inspection? A. No, sir.

Q. What does that show in regard to the acceptance of the zinc following that inspection by the Board of Inspection?

A. The entire quantity delivered was accepted.

Q. By whom? A. The Board of Inspection.

Q. Then what was done?

A. The Inspection Call was returned to the Storekeeper's office, and finally in the hands of the public Bill Clerk, who prepared a voucher for the quantity passed by the Board.

Q. Was the voucher paid for the full amount? If not, why?

A. The voucher was prepared and sent over to the Purchasing Pay Officer, who returned it with the communication here.

Q. Well, what was that communication?

A. (Reading:) January 11th, 1908. U. S. Navy Pay Office, Seattle, Washington. No. 5408. Sir:

(Testimony of Edwin F. Meyer.)

I have the honor to return herewith General Storekeeper's voucher number 506, dated January 7th, 1908, for \$949.28 in favor of the Great Western Smelting & Refining Company, in payment for 5,933 pounds zinc plates delivered [978—927] under Naval Supply Fund requisition Number 193, inviting attention to the fact this office placed an order for but 4,000 pounds of zinc plates under this requisition.

This was an emergency purchase for immediate delivery, a part of the material being shipped by express, the contractor informed me at the time, and consequently the price was abnormally high. Third, it would therefore appear that in accepting more than 4,000 pounds the Government will pay an excessive price for the overdelivery. Very respectfully, Robert H. Orr, Paymaster, U. S. Navy, Purchasing Pay Office. To the Commandant, Puget Sound Navy Yard, Bremerton, Washington.

Q. Then what was done?

A. It shows a stamp here, "Received Commandant's Office January 13, 1908, and by him keyed to the General Storekeeper."

Mr. ALLEN.—You mean sent to the General Storekeeper?

A. Sent to the General Storekeeper, yes.

Mr. ALLEN.—It came to you, then.

Mr. SHIPLEY.—What became of the 1,933 pounds, if you know?

A. Well, the Storekeeper's office forwarded all communications or correspondence in this particu-

(Testimony of Edwin F. Meyer.)

lar instance to the Board of Inspection.

Q. Where?

A. At the navy yard, the Board that accepted the material.

Q. Why was that done?

Mr. ALLEN.—I object, unless he was reading from the record.

A. I am reading from the record.

Q. Why was it sent by the Board of Inspection to the General Storekeeper's Office?

A. Why was it sent?

Q. Yes. [979—928]

Mr. ALLEN.—Read from the record.

A. The record won't show why it was sent.

Mr. ALLEN.—Have you any personal knowledge of why it was done? A. Yes, sir, I have.

Mr. ALLEN.—State.

A. It was sent to the Board of Inspection because the Board of Inspection originally passed all of the material, and no action could be taken in connection with it unless the Board of Inspection had acted; that is, we couldn't take—we couldn't say this material should be rejected without calling the Board of Inspection's attention to it.

Mr. SHIPLEY.—And then what was done in that connection?

A. Well, we have an endorsement here forwarding this correspondence to the Board of Inspection. (Reading:) 193, requisition 193, N. S. F., 1908. Navy Yard, Puget Sound, Washington. Sir: Subject: Purchasing Pay Officer, Seattle, Washington,

(Testimony of Edwin F. Meyer.)

relative to excess delivery of zinc plate under Naval Supply requisition 195. Respectfully referred to the Board of Inspection, inviting attention to attached letter. Second, in view of the conditions herein mentioned this officer suggests that the material referred to be re-inspected in order that the excess delivery be rejected and returned to the contractor. Ray Spear, Paymaster, U. S. Navy, General Storekeeper.

Q. Now, Mr. Meyer, who wrote that?

A. Well, it was done under my direction. Who did the physical work, I can't say.

Q. At the time you wrote that recommendation to the Board of Inspection that they re-inspect and reject the surplus of this delivery, were you in any conspiracy with Mr. Goldberg of the [980—929] Great Western Smelting & Refining Company?

A. No, sir.

Q. Or any of these other parties, to defraud the Government by that transaction? A. No, sir.

Mr. ALLEN.—That is January 13th, is it?

A. January 13th was the date of the endorsement.

Mr. SHIPLEY.—Was the excess delivery in fact rejected?

A. It was rejected, yes, sir. The Board of Inspection returned the correspondence with their second endorsement number 411, enclosure 6, dated January 14th, 1908. (Reading:) Purchasing Pay Officer, Seattle, Washington. Relative to excess delivery of zinc plates under Naval Supply Fund requisition number 195. Respectfully returned to the

(Testimony of Edwin F. Meyer.)

Commandant through the General Storekeeper. It is recommended that a Call be issued for re-inspection of the material passed on Call No. 1124, with a view of the rejection and return to contractor of the amount in excess of 4,000 pounds. C. H. Hayes, Lieutenant Commander, U. S. Navy, Senior Member Board of Inspection.

Q. Then what was done?

A. The Storekeeper's office then issued a new Inspection Call in which the excess delivery was rejected.

Q. Mr. Meyer, calling your attention to Plaintiff's Exhibit "19" and "20," introduced by the Government in this case, I will ask you to examine those exhibits and state to what they relate.

A. They relate to Naval Supply Fund requisition number 359, dated March 6th, 1908, for 1,933 pounds of boiler zinc at an estimated price of 12 cents, to be practically pure, soft zinc, same specifications as before.

Q. Who placed that estimate in there of 12 cents?
[981—930]

A. It was done under my direction, sir.

Q. When was that done with reference to the previous authorized purchase at 16 cents?

A. Subsequent thereto, about two months or so.

Q. Why did you not place the estimate on the previous purchase of 16 cents in making the estimate on this particular requisition?

A. Well, the correspondence in the other folder shows that it was due to the fact that some of it came

(Testimony of Edwin F. Meyer.)

by express and was abnormally high, as stated by the Purchasing Pay Officer.

Mr. MORRIS.—What folder is that, Mr. Meyer?

A. The folder I just read from.

Mr. SHIPLEY.—Which is exhibit “18”?

A. “18.” The records here show that this was an emergency purchase for immediate delivery, therefore the price was 16 cents and was abnormally high.

Q. Now, the 1,933 pounds was a portion of the zinc which had been delivered by the contractor on the same shipment on which the 4,000 pounds was authorized to be purchased?

A. Yes, sir. This is a surplus, or an excess delivery, that was over at the navy yard that had been rejected because it was purchased at an abnormally high price.

Q. And in fixing the estimate in the subsequent requisition authorizing purchase of the surplus of 1,933 pounds, you reduced the estimate¹ from 16 cents, the contract price, to how much?

A. Twelve cents, that being the prevailing price locally.

Q. And in what form was that requisition then submitted to the Bureau at Washington?

A. Well, it was submitted to the Storekeeper for signature—I read from the requisition this notation: “To cover material rejected under former requisitions on account of excess delivery. [982—931] It is requested that the Great Western Smelting & Refining Company be given an opportunity to bid, to

(Testimony of Edwin F. Meyer.)

be delivered on the wharf at navy yard within fifteen days after date of award."

Q. Now, Mr. Meyer, was this requisition limited in its scope to a purchase of zinc from the Western Smelting & Refining Company as it left your office?

A. No, sir, the statement on the face of the requisition was placed on there by me for the purpose of calling attention to the fact that Great Western Smelting & Refining Company had delivered this material, and it was over there in excess, and that they be given an opportunity, along with other dealers, to bid on that material.

Q. In competition?

A. In competition, yes, sir.

Q. This was an open purchase requisition?

A. Open purchase requisition.

Q. And what was done subsequently?

A. It was purchased from the Great Western Smelting & Refining Company at 12½ per pound, or a half cent in excess of the estimate.

Q. Well, what was done with that requisition after you issued it with the provision that it be purchased in the open market and that the smelter company be permitted to bid, what was done subsequent to that?

A. Requisition was sent—after the signature of the Storekeeper, was sent to the Paymaster General of the Navy at Washington, D. C.

Q. And what did he do with it?

A. Well, he returned it to the Navy Pay Office with the endorsement—

(Testimony of Edwin F. Meyer.)

Q. Read that endorsement to the jury. [983—932]

A. (Reading:) Navy Department, Bureau of Supplies and Accounts, Washington, D. C. March 14, 1908. Memorandum to accompany Naval Supply Fund, Puget Sound, requisition number 359, for 1,933 pounds boiler zines. In view of the statements on the face of this requisition that it is made to cover material rejected under former requisitions on account of excess delivery, the Bureau has approved this requisition, competition waived. The Bureau presumes that this material is now in the navy yard, and does not understand the paragraph which requires delivery within fifteen days after date of award. It is desired that more definite information be placed on similar requisitions in the future so that the Bureau will be able to intelligently decide as to the exact status of the same.

Q. What was the effect of that endorsement upon the subsequent proceedings, what was done following that?

A. Well, that had the effect of waiving competition, but competition was not actually waived.

Q. Had you, in your preparation of that requisition, asked for the waiving of competition and that the purchase be made exclusively from the Great Western Smelting & Refining Company?

A. No, sir, it was my purpose in placing that on there merely to give them an opportunity to bid with other dealers.

Q. Compete with the world?

(Testimony of Edwin F. Meyer.)

A. And if they were the low bidders for the material that was on the yard it would be accepted, and if not, it would be returned to them.

Q. And the Bureau at Washington, what did they do in regard to overruling your action and permitting the contract to go to the Great Western Smelting & Refining Company without competition?

A. Well, their endorsement here had the effect of— [984—933]

Mr. SHIPLEY.—Did you have anything to do with the action of the Bureau at Washington in making that change in the requisition as it emanated from your office? A. No, sir, I hadn't.

Q. Did you have any power or influence which would render it possible for you to bring about that change? A. No, sir.

Q. Was the waiving of competitive bidding and the purchasing of that amount of excess delivery from the Great Western Smelting & Refining Company brought about as the result of any conspiracy, scheme or combination between yourself, Mr. Goldberg, or any officers or agents of the Great Western Smelting & Refining Company? A. No, sir.

Q. You never have known of the action of the Bureau at Washington being criticised for its act in directing this purchase to be made from the Great Western Smelting & Refining Company exclusively at 12½ cents, have you? A. No, sir.

Q. Mr. Meyer, kindly state the date of that endorsement. I think it is an endorsement in that file by the Bureau of Supplies and Accounts at Wash-

(Testimony of Edwin F. Meyer.)

ington, or the Paymaster General.

A. I don't recall the date, sir. He has taken the folders.

Q. (Handing papers to witness.)

A. March 14th.

Mr. ALLEN.—What is the number, Mr. Meyer?

Mr. SHIPLEY.—What exhibit number?

A. 359, Exhibit Number "19."

Q. And it is March 14th of what year?

A. 1908, sir. [985—934]

Q. Did you have that matter, that action of the authorities at Washington, before you or in your knowledge at the time you prepared requisitions 438 and fixed the estimated price at 12½ cents?

A. Yes, sir, it was in the office; I had access to it.

Q. There was only about two weeks, then, in time, wasn't there, between the two, wasn't there, Mr. Meyer?

A. Yes, sir.

Q. Mr. Meyer, did you ever at any time discuss with either Kettlewell, Goldberg or Corder any of the matters or proceedings covered by Plaintiff's Exhibit, or Government's Exhibits "4," "5," "6" and "7," relating to requisition 438, which is covered by the indictment now being investigated?

A. No, sir, I never discussed any phase of it with any one of them.

Q. Mr. Meyer, I hand you for examination Government's Exhibits "65," "66," "67" and "68." Kindly examine those folders. To what subject matter do those relate?

A. Zinc, rolled sheet.

Mr. ALLEN.—What is the date, Mr. Shipley?

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—State the number of the exhibits and the date.

A. “65” and “66” are Pay Office and yard folders, requisition 79.

Q. Requisition what? A. 79.

Q. And those are which two folders?

A. “65” and “66,” Pay Office and yard respectively.

Mr. ALLEN.—For zinc, you say?

A. For zinc, yes, sir.

Mr. ALLEN.—What is the date of it?

A. October 7th, 1907.

Mr. SHIPLEY.—And what are the others, “67” and “68”? [986—935]

A. “67,” Pay Office, and yard “81,” requisition 81, dated October 7th.

Q. What date? A. October 7th, 1907.

Q. By whom were those requisitions prepared?

A. Engineer Office, navy yard.

Q. And they, you say, are for what?

A. Zinc, rolled sheet zinc.

Q. Of what character, for what use?

A. Well, they are not boiler zincs, they are zincs of same specifications, but different size. Boiler zincs are a special size; these are larger plates used for manufacturing articles for the ships, repairs to the ships.

Q. Did you have anything to do with the preparations of those requisitions?

A. Absolutely nothing, sir.

(Testimony of Edwin F. Meyer.)

Q. Who fixed the estimate upon those requisitions?

A. They are under the direction of the engineer.

Mr. ALLEN.—I respectfully suggest these were covered this morning.

Mr. SHIPLEY.—They were not, your Honor. These are exhibits introduced by the Government as circumstances against this defendant.

The COURT.—Let me say this: This witness was handed these exhibits this afternoon, and “79” refers to the steamship “Wisconsin,” and “81” to steamship “Oregon,” went over it this afternoon and I marked it down there.

Mr. MORRIS.—Your Honor is right.

The COURT.—Yes, I know it.

Q. Who fixed the estimates upon the requisition?
[987—936]

A. The Engineer’s Office, it was done in his office.

Q. What is the estimated cost in those two requisitions? A. Fifteen cents a pound.

Q. Those were prepared in what month?

A. October, 1907.

Q. And those two requisitions’ numbers are what? A. 79 and 81.

Q. What quantity of zinc was delivered by the contractors under those requisitions?

A. Under requisition 79 the contractor delivered 5,084 pounds; under requisition 81—

Q. Take the one you first testified to.

A. The contractor delivered 4,121 pounds.

Mr. ALLEN.—79?

(Testimony of Edwin F. Meyer.)

A. Under 89, 4,121 pounds, and under 79, 5,084.

Mr. SHIPLEY.—What I want now, how much was accepted as compared with how much was—

A. Well, under 79, 2,804 pounds.

Q. Was what?

A. Inspected and passed, and 2,280 pounds rejected as being in excess.

Q. And what was the case of the other requisition?

A. 2,804 pounds passed inspection and 1,617 pounds billed “In excess.”

Q. Did you have any thing to do with the inspection and acceptance or rejection of the material under those requisitions? A. No, sir.

Q. Calling your attention to Plaintiff’s Exhibit “63” and “64” offered by the Government in this case, state what those transactions were, shown on that exhibit. [988—937]

A. “63” and “64” are Pay Office and yard copies of folder 358, dated March 6th, 1908. They cover 3,887 pounds of sheet zinc.

Q. What is the estimated price?

A. Estimated price is 12 cents.

Q. What information is given on the face of the requisition concerning that transaction?

A. But outside from the specifications we have—there is a notation here: “To cover material rejected under former requisitions on account of excess delivery. It is requested that W. A. Corder, Seattle, Washington, be given an opportunity to bid, to be delivered on the wharf, navy yard, Puget Sound,

(Testimony of Edwin F. Meyer.)

within fifteen days after date of award.”

Q. By whom was that prepared?

A. In the requisition office of the Storekeeper under my direction.

Q. State what appears on the other one.

A. Beg pardon?

Q. What is the other exhibit?

A. That is Pay Office copy. It is identically the same thing.

Q. Explain that transaction to the jury.

A. Well, it is a requisition 356, covers 3,787 pounds of sheet zinc. It is a transaction identically the same as the former one, requesting that—it is to cover an excess delivery from W. A. Corder Company, material that was delivered in excess of the amount called for on the previous requisition, and it was requested that this concern be given an opportunity to bid, along with other dealers.

Q. In the preparation of those two requisitions, did you make a new request that the article requisitioned for be purchased from any particular dealer?

[989—938]

A. No, sir.

Q. What estimate did you place on those requisitions? A. Twelve cents.

Q. What did the Purchasing Pay Office pay for that zinc as disclosed in those folders?

A. Paid 12½ cents.

Q. Did you have anything to do with that purchase? A. No, sir.

Q. Mr. Meyer, I call your attention to the evi-

(Testimony of Edwin F. Meyer.)

dence given in this case in the examination of Paymaster Spear regarding a telegram sent by the Storekeeper to the Bureau at Washington. I believe that is in exhibit "A." It is contract—

A. 12,653.

Q. 12,653 and 12,816.

Mr. MORRIS.—Here is exhibit "14," Mr. Shipley.

Mr. SHIPLEY.—All right.

Q. Calling your attention to Plaintiff's Exhibit "A," Mr. Meyer,—your Honor will have to pardon us; these exhibits have got scattered here so we can't get ahold of them readily. Examine that folder, please, Mr. Meyer, and state what it is.

A. Did you say Plaintiff's Exhibit "A"?

Mr. ALLEN.—"14," I think.

A. "14," yes.

Mr. ALLEN.—That is the toban bronze, I understand it?

The COURT.—Exhibit "A" is the telegram.

Mr. SHIPLEY.—I have to withdraw that because I haven't found the exhibit.

A. This is requisition number 649, dated May 23d, 1908.

Q. What does that relate to?

A. Calls for thirty-two items of supplies, items twelve to thirty-two [990—939] inclusive being toban bronze.

Q. And that is dated when? A. May 23d, 1908.

Q. And what was the cause of the preparation of that requisition?

(Testimony of Edwin F. Meyer.)

A. Stock for issue to Atlantic Squadron.

Q. Is there anything in there showing the purpose for which it was prepared?

A. That is right on the face of the requisition, sir.

Q. What does that state?

A. Stock for Atlantic Squadron.

Q. Were any of the battleships in these waters at that time?

A. I can tell you as near as I can remember, I think there were several of them here.

Q. What did you do with that requisition?

A. The requisition was prepared and sent through the navy yard, Mare Island. There should be something in here to show that.

Mr. MORRIS.—That is a letter in there, I think.

A. There was, I know.

Mr. SHIPLEY.—Isn't there a letter in there directed to the Storekeeper, navy yard, at Mare Island? A. I am looking for it, sir; yes, sir.

Q. Read it to the jury.

A. (Reading:) No. 649 N. S. F., May 25th, 1908. This is to the General Storekeeper, Navy Yard, Mare Island. Sir: The General Storekeeper respectfully transmits herewith Naval Supply Fund requisition number 649 covering certain articles required for issue to the vessels of the battleship fleet assigned this yard. Second, it is requested that such articles as can be spared from stock at Mare Island be shipped immediately under shipment order 1533-M, and all papers transmitted to the Bureau for further action. [991—940] Respect-

(Testimony of Edwin F. Meyer.)

fully, blank, Paymaster, U. S. N., General Storekeeper.

Q. By whom was this letter written?

A. It is written by me.

Q. From the Puget Sound Navy Yard.

A. Yes, sir.

Q. General Storekeeper's office? A. Yes, sir.

Q. What was the purpose or the occasion of writing that letter?

A. On along about May, the middle of May, when these requisitions were prepared, we were experiencing considerable difficulty in obtaining early delivery of articles through the local market, and there was a provision for obtaining supplies from Mare Island in the event of such a difficulty. This requisition was transmitted to the General Storekeeper at Mare Island with the request that the articles, if any he could spare, be shipped up here, and the rest of the material purchased, if obtainable, in the local market.

Q. Now, was that letter written to the Storekeeper of the Mare Island Navy Yard requesting the shipping of the supplies in furtherance of any conspiracy then existing between yourself and Kettlewell and Goldberg? A. No, sir.

Q. Is this the same toban bronze referred to by the Government in the presentation of its case in chief? A. This is the folder that was introduced.

Q. Mr. Meyer, did you consult either with Mr. Goldberg or Mr. Kettlewell in regard to the advisability of securing that toban bronze from the Mare

(Testimony of Edwin F. Meyer.)

Island Navy Yard instead of purchasing it here by open requisition so that Mr. Goldberg could get the chance [992—941] on it?

A. No, sir. It was a procedure adopted with the view to have it shipped from Mare Island rather than purchase.

Q. Mr. Meyer, at that time, if you had been engaged in any conspiracy to further the ends of Mr. Goldberg, Mr. Kettlewell and yourself by purchasing that toban bronze from the United States Government without fair competition and at an extortionate price, would you have written that letter?

A. No, sir.

Q. What estimate did you place on the requisition in that instance? A. 40 cents per pound.

Q. What price was it purchased at?

A. A small quantity of it was purchased at 30 cents; another, a large quantity, was purchased at 50 cents.

Q. Could Mare Island furnish those supplies?

A. None of it, sir.

Q. Is there any correspondence on that matter further than what you have read to the jury?

A. Yes, sir, there is some correspondence, copy of correspondence from the Bureau of Supplies and Accounts.

Q. Where?

A. Washington, D. C. (Reading:) First endorsement, August 21st, 1908. Respectfully returned to the General Storekeeper, Navy Yard, Puget Sound. 2—22 it is here. It is noted that the estimated price

(Testimony of Edwin F. Meyer.)

on N. S. F. requisition 649 was about 40 cents per pound, while the price on the attached bill and requisition is 50 cents per pound, an increase of 25 per cent over the estimated cost. Please inform the Bureau at what price award was made on N. S. F. requisition 649. J. S. Carpenter, assistant to [993—942] the Bureau. That was referred by the Storekeeper to the Purchasing Pay Officer.

Q. Is there anything further there, Mr. Meyer?

A. (Reading:) August 27, 1905. Navy Yard, Puget Sound, Washington. General Storekeeper. Requisition number 207, Naval Supply Fund, respectfully returned to the Bureau of Supplies and Accounts, inviting attention to award dated June 10th, 1908, to the Great Western Smelting & Refining Company under Naval Supply Fund requisition number 649. Referring to the second paragraph of the first endorsement, the records of this office show that award was made at fifty cents per pound. Paymaster, U. S. N., Storekeeper.

Q. Are there any other endorsements there?

Mr. ALLEN.—You said August 27, according to the stenographer's notes, 1905.

A. 1908. That is all in connection with that.

Mr. SHIPLEY.—Is there anything else in that folder concerning which you desire to make any explanation?

A. No, sir, that is all covered here. There is a telegram here. It is June 4th, 1908, copy of telegram to the Paymaster General, Navy Department, Washington, D. C. (Reading:) Supply Fund requi-

(Testimony of Edwin F. Meyer.)

sition 649, bids total \$1119, request authority place award. Urgent for battleships. Blank Paymaster, U. S. N., General Storekeeper.

Q. Where was that telegram sent from?

A. Storekeeper's Office, Puget Sound, to the Bureau of Supplies and Accounts at Washington, D. C.

Q. Is there any answer to that?

A. No, sir. The answer would go to the Purchasing Pay Office with authority to purchase. [994—943]

Q. After the failure to secure the supplies from the Mare Island yard then this requisition was issued?

A. No, sir. The requisition itself was forwarded to Mare Island in the first place to request that if they could furnish the articles it would be shipped up right away from Mare Island, if not, the requisition would be forwarded from Mare Island to the Bureau of Supplies and Accounts for the approval of the Paymaster General of the Navy.

Q. Now, was that course that was taken in this particular instance? A. Yes, sir.

Q. The requisition was forwarded to the Mare Island Navy Yard, then, and directed to the Bureau of Supplies and Accounts, Washington, D. C.?

A. Yes, sir, but the formal approval required some time, and in view of the exigency the Bureau was telegraphed to approve it by wire.

Mr. ALLEN.—You say you telegraphed?

A. The Bureau was telegraphed; the Storekeep-

(Testimony of Edwin F. Meyer.)

er's office telegraphed.

Mr. ALLEN.—The telegram went from you, then?

A. Yes, sir, from the Storekeeper's office.

Mr. SHIPLEY.—Then the answer to that telegram would go, or did go in this case, to whom?

A. There is nothing here to show to whom it was sent.

Q. To whom was the authority sent to make this purchase under this requisition?

A. To the Purchasing Pay Officer in Seattle.

Q. That was an authorization that came directly from the Bureau at Washington? [995—944]

A. Yes, sir.

Q. To the Purchasing Pay Office in Seattle?

A. Yes, sir.

Q. And with that did you have any connection?

A. No, sir.

Q. If the Mare Island Navy Yard had been able to furnish the supplies for this toban bronze, then would there have been any further action taken on this open purchase requisition?

A. No, sir, it would have been indicated on the face of the requisition that they had furnished it.

Q. And that would end the proposition to purchase the bronze?

A. Yes. We would have received the material and that would have closed it.

Q. And under those circumstances the Great Western Smelting & Refining Company would not have had an opportunity to become the purchaser?

A. No, sir. [996—945]

(Testimony of Edwin F. Meyer.)

[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants Edwin F. Meyer and Emar Goldberg. Vol. 6, Pages 787 to 945. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 14, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [997]

EDWIN F. MEYER on the stand.

Direct Examination (Resumed).

(By Mr. SHIPLEY.)

Q. Calling your attention to a folder marked Defendants' Exhibit "A," I will ask you to examine that folder and state generally what it is.

A. This is a folder, contract number 12,653, entered into by the Navy Department at Washington, D. C., with the Central Metal & Supply Company.

Q. What year?

Mr. MORRIS.—Mr. Meyer, I can't hear you; I don't know whether the jury can or not.

A. It is a contract number 12,653, dated January 24th, 1910, entered into by the Navy Department at Washington, D. C., with the Central Metal & Supply Company of Lombard Street, Baltimore, Maryland.

Mr. SHIPLEY.—It has been admitted for identification? A. It is admitted, sir.

Mr. SHIPLEY.—We desire to offer that in evidence at this time.

Q. This is from what branch of the Navy, this folder? A. Yard files.

Q. It is a record of the General Storekeeper's Office, is it? A. Yes, sir.

Q. This one of the folders that was produced by

(Testimony of Edwin F. Meyer.)

the Government pursuant to your request?

A. Yes, sir.

Mr. SHIPLEY.—We offer this in evidence as Defendants' Exhibit "A."

Mr. MORRIS.—See if that is not an exhibit in the case.

A. It has been admitted; it is noted there. [998—946]

Mr. SHIPLEY.—Yes, it is admitted, I remember.

Q. Mr. Meyer, are any transactions disclosed in that file pertaining to excess delivery, or action by the authorities disclosed in that file?

A. No, sir, nothing in here about excess deliveries.

Q. What is the matter covered in this file?

A. Shall I read this?

Q. Yes.

A. It is a telegram from the Storekeeper's Office at Bremerton to the Illinois Zinc Works, Peru, Illinois. (Reading:) Navy Yard, Puget Sound, Washington, February 18th, 1910. Illinois Zinc Company, Peru, Illinois. Please wire price f. o. b. Bremerton, Washington, on a shipment 25,000 pounds sheet boiler zinc, size $\frac{1}{2}$ inch by 6 by 12, similar recent order Central Metal & Supply Company. Urgent. Advise earliest date can ship if ordered. Official business government rate pay. Paymaster, U. S. N., General Storekeeper.

Mr. ALLEN.—Did you read the date on there?

A. February 18th, 1910. There is a note here. This is to Illinois Zinc Company; reply from Central Metal & Supply Company.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—By whom was that telegram written, if you know?

A. It was written by me, sir.

Q. Describe to the jury the transaction, how it originated, and what the purpose of this correspondence was.

A. Well, we at this particular time, February 18th, we were in the market for a large quantity of boiler zinc for the use of the vessels then in the harbor at Puget Sound Navy Yard. In looking over the records I found that a shipment, a contract, had been entered into with these Baltimore people, the Central Metal & Supply Company, but that shipment would be made from the [999—947] Illinois Zinc Company; that is the factory in the middle west. Realizing that the price, the local price, was high on zinc, I communicated directly with the manufacturer in an effort to get the zinc from him, if possible. This telegram was the result of it, asking him to wire price delivered f. o. b. Bremerton of a car of zinc. I read here from a telegram received, not from the Illinois Zinc Works, but from the Central Metal & Supply Company. It was in reply to the telegram I sent. (Reading:) It is Baltimore, Maryland, February 19, 1910. General Storekeeper, U. S. Navy Yard, Puget Sound, Washington. Referring telegram Illinois Zinc Company, quote zinc plates specified, delivery navy yard immediate shipment rail \$8.90, by steamer \$8.70 per hundred. Central Metal & Supply Company. 9:51 A. M. Commandant's Office received February 19th, 1910, Navy Yard,

(Testimony of Edwin F. Meyer.)

Puget Sound, Washington.

Mr. ALLEN.—And what is the date of this telegram? A. February 19th, the following day.

Mr. SHIPLEY.—Is there anything further?

A. Yes, sir. Immediately upon the receipt of that telegram I wired the Paymaster General of the Navy. (Reading:) Navy Yard, Puget Sound, February 19, 1910. Paymaster General, Navy Department, Washington, D. C. Referring to class 52, contract 12,653, boiler zinc required for Tennessee and Washington, contractor reports can ship like order by rail immediately at \$8.90. Request amendment of contract to cover immediate shipment, order to be followed by wire tracer. Recommend waiver inspection at works. Cost local purchase prohibitive.

Mr. ALLEN.—That is dated what date?

A. February 19, 1910. Then I have a note here in pencil. (Reading:) Bureau contract 12,653, Bureau contract 12,816.

Mr. SHIPLEY.—What do those memorandums relate to?

A. Notes that I made from time to time showing what followed. Bureau contract 12,653 is the contract on which the Bureau at [1000—948] Washington originally bought the zinc, and contract 12,816 refers to the contract which was the result of this contract that was sent to the Bureau. I have a note here also, this cost 11½ to 12½ cents from Seattle contractors.

Q. When was that written on there?

A. Sometime after the telegram was sent. I don't

(Testimony of Edwin F. Meyer.)

know just about—I made the note on there, I think, for the information of the office.

Q. Information of what office?

A. The Storekeeper's office; that the material was costing 11½ to 12¢ in Seattle, and by taking this action we got it for 8 cents at least.

Q. What do you mean in that letter by the statement "Local price prohibitive"?

A. Well, it was high.

A. All zinc purchased locally had been costing from 10½ to 16 cents. The average price would be probably about 12 or 12½ cents, and in taking this step we desired to get it as cheap as possible.

Mr. SHIPLEY.—Any further matters in that folder you desire to call to the attention of the jury?

A. No, sir; except the material was subsequently contracted for on that contract there.

Q. What is that, Mr. Meyer?

A. No, sir; that closes this transaction. We opened, then, another folder, which is that 12,816.

Q. (Handing the witness navy yard folder containing contract number 12,816, marked Defendants' Exhibit A-23.) I will ask you of the transaction disclosed by that file relates to the subject matter of the letter and telegrams to which you have just been testifying.

A. This is the result of that telegram. The Bureau then entered [1001—949] into a contract with the Central Metal & Supply Company to furnish that 25,000 pounds of zinc, and they have a note—it is contract number 12,816, February 26th, 1910, to be

(Testimony of Edwin F. Meyer.)

shipped immediately, mill inspection waived.

Q. By whom was that put on there?

A. By the Bureau at Washington.

Q. For what purpose, what was the effect of that endorsement?

A. They waived the inspection at the mill in order to get the material out here in a hurry.

Q. Did you say an exigency existed at that time?

A. Yes, sir. "Tennessee" and "Washington" were waiting for the zinc.

Q. Was it an ordinarily customary procedure for the Government in ordering material of that character from the eastern factories, to waive or dispense with factory inspection?

A. Only in a case of emergency, I think, sir.

Q. Did anyone, other than the authorities in Washington, D. C., have power to dispense with that kind of inspection? A. No, sir.

Q. That was not a matter that you, or the General Storekeeper at the Puget Sound station, had any supervision or control over?

A. We did suggest that that be done; the Bureau at—

Q. I say, you didn't have any control over it?

A. No, sir.

Q. All you could do was to suggest the emergency or exigency to—the Department in Washington, had to exercise their discretion? A. Yes, sir.

Q. You can proceed on anything further.

A. That contract was entered into February 26th, and there is nothing in here but correspondence be-

(Testimony of Edwin F. Meyer.)

tween the Storekeeper and the contractor requesting that the car be traced and rushed [1002—950] through, considerable of that here.

Q. Directed to what purpose, and for what effect?

A. Purpose of getting the material delivered as soon as possible.

Q. Of tracing the car and expediting the delivery?

A. There is a telegram here to the navy yard (reading): Bureau of Supplies and Accounts, Washington, D. C., February 25th, 1910. Navy Yard, Puget Sound, Washington—

Mr. RIDDELL.—I don't think that is in evidence. I think you ought to be a little careful. That isn't in evidence.

Mr. SHIPLEY.—Then we ask to have it admitted, your Honor. It relates to the same subject matter. The other was admitted, and I supposed the two were admitted together. It is part of the same transaction concerning which folder "A" was admitted.

Mr. ALLEN.—Your Honor has let in the other, and I see no reason why this should not be admitted. If they have any materiality those two ought to go in together.

Mr. SHIPLEY.—That is the reason I am offering them at this time.

The COURT.—Admitted.

(Folder referred to received in evidence and marked Defendants' Exhibit "A-23.")

Mr. SHIPLEY.—This contract was entered into by reason of the proceedings in folder "A"?

The COURT.—Marked "A-23." That has not been admitted.

(Testimony of Edwin F. Meyer.)

Mr. SHIPLEY.—Yes, we are just offering it, your Honor.

Mr. ALLEN.—If this is the folder that properly follows the other it probably belongs in here.

Mr. SHIPLEY.—The other was exhibit “A,” which was admitted the other day,—

The COURT.—Then it is admitted. [1003—951]

Mr. SHIPLEY.—This contract was entered into by reason of the proceedings in folder “A,” or resulted in the entering into of this contract.

Mr. RIDDELL.—This is the same contract, Mr. Shipley?

Mr. SHIPLEY.—It is the same contract that was entered into by reason of the other in exhibit “A.”

The COURT.—Exhibit “A-23” has been admitted.

Mr. SHIPLEY.—Did you say there was a telegram in there?

A. Yes, sir; from the Bureau, Navy Department, Bureau of Supplies and Accounts, Washington, D. C. (Reading:) February 25, 1910. Sir: The Bureau hereby confirms its telegram of even date as follows: Navy Yard, Puget Sound, Washington. Replying telegram 19, Bureau has placed order with Central Metal & Supply Company for immediate shipment from Illinois 25,000 pounds rolled sheet boiler zinc plates 12 by 6 by 1½ inches, navy standard quality, containing not less than 99 per cent pure zinc, same as class 52, schedule 259, at 089 cents per pound. Factory inspection waived. Contract 12,816 forwarded to cover. Night rate. Respectfully, E. B. Rogers, Paymaster General, U. S. Navy.

(Testimony of Edwin F. Meyer.)

Q. The contract, Mr. Meyer, was entered into where? A. At Washington, D. C., sir.

Q. Did this office here, meaning the General Storekeeper's office, have anything to do with the actual contract, letting of contract?

A. No, sir; only putting the facts before them.

Q. I mean the contract itself? A. No, sir.

Q. And was entered into by the Bureau at Washington between the party that shipped the material? [1004—952] A. Yes, sir.

Q. And does this record disclose anything about the time of delivery?

A. Well, it is the next paper here, is a telegram sent by the Storekeeper to the Central Metal & Supply Company, Baltimore, Maryland. (Reading:) February 26th, 1910. Please advise collect date and point of shipment, route and car number boiler zinc plates, contract 12,816, and arrange for each connecting line to advise me date of receipt and how forwarded. Official business, Government rate, pay.

Q. Anything further there following that same matter?

A. There is another telegram of March 7th, 1910. (Reading:) Illinois Zinc Company, Peru, Illinois. Please wire collect date shipment, route and car number Boiler zincs Central Metal & Supply Company contract 12,816. Urgent. Rush tracer. Storekeeper. Official business, Government rate pay. Telegram from the Illinois Zinc Company: (Reading:) Peru, Illinois March 7th, 1910. General

(Testimony of Edwin F. Meyer.)

Storekeeper, Navy Yard, Puget Sound, Washington. Zinc plates, contract 12, 816, shipped March 5th Rock Island care of Chicago, Milwaukee & Puget Sound at Minnesota transfer in C. B. car No. 2129. Illinois Zinc Company. Telegram: (Reading:) Baltimore, Maryland, March 8th, 1910. General Storekeeper, Navy Yard, Puget Sound, Washington. Contract 12,816 shipped Peru, Illinois, seventh, Rock Island care of Chicago, Milwaukee & Puget Sound Railroad, C. B. car 2129. Central Metal & Supply Company. 846 a. m. Collect, Government. And subsequent correspondence to the transportation companies asking them to trace the car.

Q. Mr. Meyer, what was the occasion, if any, existing for the sending of all of these telegrams and communications concerning the shipment or routing of this shipment of zinc?

A. There is a document in here which might explain that, sir. [1005—953]

Q. Read it.

A. (Reading:) March 8th, 1910. Gentlemen: This is to the Chicago, Milwaukee & Puget Sound Railway freight department, Seattle, Washington. I have just received a wire from the Illinois Zinc Company at Peru, Illinois, that a car containing 25,000 pounds of rolled zinc plates was shipped by them to this navy yard, in C. P. car No. 2129. Shipment left Peru March 5th, 1909, routed via Rock Island care of Chicago, Milwaukee & Puget Sound at Minnesota transfer. A part of the contents of this car is urgently needed for issue to the U. S. S. "Pennsylvania" be-

(Testimony of Edwin F. Meyer.)

fore her departure on or about the 16th instant, and will thank you to start telegraphic rush tracer after car, being in constant touch therewith until delivery at destination. I would also consider it a favor if you would notify this office daily of the location of the car. Kindly give this matter your personal attention and advise me what are the chances for delivery within the time stated. Respectfully, blank Paymaster, U. S. N., acting General Storekeeper.

Q. Who dictated that? A. I did, sir.

Q. For what purpose?

A. For the purpose of getting the zinc on the navy yard at the earliest possible moment.

Q. Mr. Meyer, at the time you initiated this purchase and wrote the letter to the authorities in Washington, D. C., calling attention to this price of zinc and the prohibitive character in this market, was there anything to have prevented you purchasing that zinc by open purchase requisition just in the same manner as was done in the case of requisition 438?

A. The ordinary procedure in that case would have been the preparation [1006—954] of an open purchase requisition.

Q. The ordinary procedure would have been that?

A. Yes, sir.

Q. And that 438 referred to is the one that is now being investigated upon this trial? A. Yes, sir.

Q. At the time of your initiating this purchase through this channel from the east, were you in any improper combination or conspiracy with Mr. Gold-

(Testimony of Edwin F. Meyer.)

berg, or Mr. Corder, or Mr. Kettlewell, to perpetrate a fraud upon the United States Government in the purchase of this zinc?

Mr. ALLEN.—This is in January or February, 1910.

A. No, sir.

Mr. SHIPLEY.—Mr. Meyer, I call your attention to a letter that was introduced, I believe, as a part of exhibit “A,” in which counsel for Mr. Goldberg, I believe, made the offer, and the attention of Paymaster Spear was called to a signature. Is that in that folder or in exhibit “A”?

A. No, sir; that letter is in a separate exhibit.

Q. Oh, that is a separate exhibit? A. Yes, sir.

The COURT.—“A” was a telegram.

Mr. SHIPLEY.—You recall the transaction to which I refer? A. I do, yes, sir.

Q. I wish you would explain that matter to this jury, how that letter came to be written, and how the signature of Paymaster Spear came to be attached to it.

A. Well, there is of necessity considerable correspondence in the Storekeeper’s Office emanating at the desk of various clerks that are merely routine and perfunctory; they are written daily. A part of these letters would be, for instance, the “Follow-up-system.” [1007—955] We had a card index system, by means of which the award clerk would from day to day notify the respective dealers of the delay in the receipt at the navy yard *of the delay in the receipt at the navy yard* of the material which had

(Testimony of Edwin F. Meyer.)

previously been ordered from them. By that means we kept in daily contact with the various dealers all over the country. This award clerk would write sort of a stereotyped letter, calling attention of the dealers to the fact that material had not been delivered, or, if delivered and rejected, it had not been replaced. Frequently the storekeeper would not be in the office in the afternoon. Rather than hold up those merely perfunctory routine letters which involved no responsibility, when the letter was placed on my desk, rather than delay it a matter of twenty-four hours, I would write the Storekeeper's name to them and initial it "M," Meyer, showing that the responsibility was with me, and would send the letters out. I remember in the spring of 1908 the Paymaster was off the navy yard maybe two or three days at a time. I think he was in Spokane once for about a week, if I am not mistaken. It wouldn't be expected, I imagine, the mere routine work would be held up.

Mr. SHIPLEY.—What would have been the result on the routine of the office if there had been no persons present to have sent out this character of letter that you have just described to the jury?

A. Well, it would cause a delay.

Mr. SHIPLEY.—Mr. Meyer, what had been the custom and practice in the Storekeeper's office covering the matter concerning which you have just been testifying previous to the assignment of Paymaster Spear to the duties of General Storekeeper at Bremerton?

A. It was the rule that matters of that kind, merely

(Testimony of Edwin F. Meyer.)

routine matters [1008—956] which were not official, say, correspondence with contractors that involved no order or responsibility, that we would—matters of that kind would be forwarded, in the event the Storekeeper was not in the office, rather than delay the matter it would be forwarded out by the Chief Clerk, or someone else.

Q. And who at that time ranked next to the Paymaster in charge in that particular department, say, in the years 1907 and the early part of 1908?

A. I did, sir.

Q. And under whose supervision would the sending out of such correspondence, and under whose would it fall and did fall at that time?

A. Under my supervision, sir.

Mr. ALLEN.—He answered it was the rule. You know if it was the written rule the rules would be the best evidence.

Mr. SHIPLEY.—State the practice. State to this jury what the facts were during the year 1907 what was done.

A. Well, the facts were that any circumstances of that kind I just described, where the letters—the absence of the Storekeeper would involve a delay—

Mr. SHIPLEY.—Mr. Meyer, answer the question.

A. During the time Paymaster Brooks was here, during 1907, it was the rule of the office all these matters be forwarded without delay, and not held up awaiting his presence in the office, insignificant matters.

(Testimony of Edwin F. Meyer.)

Q. What was the practice following the arrival of Paymaster Spear up to the time of the issuance of the particular letter concerning this the United States Attorney asked Paymaster Spear, in the presence of this jury, whether his name was signed to that by him or by his authority? [1009—957]

A. I, of course, continued the practice which had been in vogue. As I recall, Paymaster Spear, upon his arrival, told me there would be no departure from any of the ordinary customs which had been in vogue until he had become fully acquainted with the conditions there, and those conditions continued to exist until he from time to time made changes that he saw or thought necessary.

Q. And at the time the particular letter was written by you, why was Paymaster Spear's name signed to that letter by you, adding the initial "M"?

A. Well, as I stated, the matter was just a call on the contractor to perform his obligation, his contract, and was merely a routine letter that involved no responsibility on anyone, and all of those letters, or similar letters, might be—his name might have been put in by the messenger in the office, or anybody, so long as it was of that form, that type.

Q. What did the initial "M" indicate on that letter, and why was it affixed to the signature of the Paymaster?

A. It was "M," indicating that I had—I was responsible for the letter.

Q. Was that put there for the purpose of deceiving anybody? A. Indeed not, sir.

(Testimony of Edwin F. Meyer.)

Q. Recurring to the telegram which you read to the jury in one of the exhibits you have just been handling in reference to the price of zinc being prohibitive in the local market, I will ask you if Paymaster Spear was at Bremerton at that time, if you remember.

A. Why, he said he was not, and the telegram—it has at the bottom of it “P. A., Paymaster, Assistant General Storekeeper.” It follows, therefore, that the assistant to Paymaster Spear was then in charge of the office. [1010—958]

Q. That was during the absence of the Paymaster himself? A. Yes, sir.

Q. Mr. Meyer, in the matter of the purchase of the particular zinc under the contract disclosed by the two folders, what was the result as to a saving or a loss to the Government as the result of that purchase upon your recommendation, as shown by exhibit “A” and “A-23.”

A. Zinc on contract 12,816 was purchased at eight or nine or ten cents. The prevailing local price to the Government of zinc was approximately 12 cents, a saving of a little more than three cents per pound on 25,000 pounds.

Q. Were those two folders brought in by the Government in this case? A. No, sir.

Mr. SHIPLEY.—How did you get them?

A. I gave Mr. House the numbers and asked him to bring them in.

Q. During the proceedings of the trial?

A. Yes, sir.

(Testimony of Edwin F. Meyer.)

Q. Mr. Meyer, there has been some testimony in regard to red slips, or tags, being attached to papers requiring the signature of the Paymaster. I believe it was Mr. McNeil who was examined by Mr. Riddell on that question. State what the facts are in regard to that.

A. Well, during the time I acted as Chief Clerk, whenever any matter—it was necessary to bring any matter particularly to the Storekeeper's attention, I invariably either called his attention to it personally or would put a piece of pad I had on the desk, not red, but white paper. I did not have at any time a red, any red paper. I would write a little note on this pad and attach it to the requisition, or other instrument, calling his attention to some particular fact that needed his attention [1011—959] in that particular.

Q. And that practice continued up to what period?

A. I remember very distinctly that after Mr. Barnes, who succeeded me as Chief Clerk, after he came he bought some red paper.

Q. And that was in what year, what month?

A. Why, I don't know. It was after his arrival here.

Q. Well, about when did he arrive?

A. After October, 1908. Well, I don't say after October, sometime on or about September or October.

Q. And at the time requisition 438 was issued the custom of attaching red tags was in vogue or not?

A. It was not in vogue, sir. I frequently wrote on the fact of the requisition in red ink.

Q. For what purpose?

(Testimony of Edwin F. Meyer.)

A. Well, in the case of requesting that advertisement be waived red ink was noted on the face of it.

Q. And that red ink, was that placed there for the purpose of attracting the attention of the Paymaster and the Bureau officials at Washington?

A. Yes, sir.

Q. That was the clause referring to the circumstance of an exigency and the purchase without advertising?

A. Requesting advertising be waived.

Q. And that was written in by your own hand?

A. My own handwriting after the paper was prepared by the clerk and put on my desk I took red ink and wrote on the face of it these remarks.

Q. The body of the requisition, was that prepared on the typewriting machine?

A. Yes, sir. [1012—960]

Q. And this writing by pen in your hand in red ink would attract the attention of the Paymaster and the higher officials, and was written on this requisition prior to the time it left your desk in being passed up to Paymaster Spear's desk?

A. Yes, sir.

Mr. ALLEN.—This is 438?

Mr. SHIPLEY.—Yes, sir, 438.

Mr. ALLEN.—All right. A. Yes, sir.

Mr. SHIPLEY.—The same procedure as was shown in requisition 490?

A. Identically.

Q. Mr. Meyer, a reference has been made in this case to a card index. State the facts in regard to that from your personal knowledge.

A. Well, there are from, anywhere from twenty-five to seventy-five thousand items of stores in the Storekeeper's Department, and prior to the year

(Testimony of Edwin F. Meyer.)

1908 the stock was maintained by the various yard departments, five in number. We made no attempt to keep up the stock of but a few items, but subsequent to that time it developed upon the Storekeeper to do it, therefore it was necessary to establish a system by means of which reference could be made readily to any one of those items. During the early part of 1908 and prior to that time we had no such system, but after I was relieved of duties of Chief Clerk and given the charge of the Requisition Clerk, and therefore had more time to devote to that work, I began working up and working back the requisitions in order that the history of any article in store could be had readily without having to waste too much time in finding it. That system was a card for each and every item in stock arranged along a classification, and then sub-classified [1013—961] alphabetically.

Q. Mr. Meyer, there was some testimony introduced before the jury by the witness George Lockwood, a witness that was called by the Government, in regard to a conversation with you relative to shortage in certain shipments, certain amounts of weight, at the navy yard. State to the jury the facts in that matter.

A. Well, I recall that during the—on or about the time that he spoke of, there were numerous complaints brought into the Storekeeper's Office, some personally and some by letters, of shortage in weight. The weights reported by the Receiver at the navy yard would be less than the weights shipped over there, or claimed to have been shipped, and on one

(Testimony of Edwin F. Meyer.)

or more occasions I personally went down and saw Mr. Lockwood and asked him if it was not a fact that his scales needed testing. We hadn't had them tested for quite a while prior to that time; in fact, I don't recall they were ever tested prior to that time.

Mr. ALLEN.—Prior to which time, Mr. Meyer?

A. Before 1908, say. Because it was subsequent to that time that Paymaster Spear requested the preparation of a requisition for testing the yard scales, all of them. And the occasion in question was where the—

Mr. SHIPLEY.—You say the occasion in question?

Q. This letter that was introduced here. That was testified to by Mr. Lockwood?

A. By Lockwood, yes, sir. The Great Western Smelting & Refining Company—

Mr. ALLEN.—Is that an exhibit?

Mr. MORRIS.—Now, handing you Defendants' Exhibit "R." That is in evidence. Defendants' Exhibit "R," I think, your Honor, was admitted in evidence. If it is not we move for its admission.

[1014—962]

The COURT.—"R" has not been admitted.

Mr. SHIPLEY.—What is that folder?

A. This is Storekeeper's folder, being contract 10,058. The original of this letter was referred to by Mr. Schlesinger, I believe.

Mr. ALLEN.—How is that identified on the back?

A. "R."

Mr. SHIPLEY.—Defendants' "R" for identification.

(Testimony of Edwin F. Meyer.)

A. But there is somewhere among the exhibits here the original of this letter.

Q. I see. We offer this folder, your Honor please, at this time, showing the letter in connection with the entire transaction, which has already been gone into by the introduction of one of the other copies of the letter.

The COURT.—Is that the Spear letter?

A. That is the copy of Paymaster Spear's letter; the original is with the contract.

The COURT.—The Spear letter is identified as Defendants' Exhibit "B," a letter of January 9th, 1909. That is admitted; the letter is in evidence; but folder exhibit number "R" has never been offered.

Mr. SHIPLEY.—We will offer it, your Honor.

The COURT.—If it is the letter you desire, the letter is already in evidence.

Mr. SHIPLEY.—Let the record show, your Honor, this exhibit is admitted.

The COURT.—Admitted.

(Folder referred to received in evidence and marked Defendants' Exhibit "R.") [1015—963]

Mr. SHIPLEY.—Mr. Meyer, refer to the contents of the folder and read to the jury.

A. This is a contract made by the Navy Department, Bureau of Supplies and Accounts, number 10,058, with the Great Western Smelting & Refining Company.

Mr. MORRIS.—What is the date?

A. October 27th, 1909. The folder isn't correct.

Mr. ALLEN.—The folder isn't correct?

(Testimony of Edwin F. Meyer.)

A. No, sir as to date. The contract is dated October 23d, 1908. The folder is incorrect in that respect. That is the notation on the outside of the folder.

Mr. SHIPLEY.—That is, you mean the record that is written out on the face of the folder?

A. Yes, sir, it is a clerical error.

Mr. SHIPLEY.—Read the contract and give the date as shown on the original.

A. It calls for, reading the contract, to be delivered at navy yard, Puget Sound, Washington, class 219, 100,000 pounds, about, inga copper, per hundred weight \$13.49 total \$13,490. (Reading:) Bureau requisition 45, Naval Supply Fund, Schedule 474, to be delivered at the navy yard as specified below, deliveries at each navy yard to commence within thirty days and to be completed within sixty days after date of contract, or under such other time of delivery as may be stated by the bidder, to be delivered at the Navy Yard, Puget Sound, Washington, class 219.

Mr. ALLEN.—I wanted you to read the upper part so they would know—

A. I read that just before that.

Mr. ALLEN.—Great Western Smelting & Refining Company?

A. Great Western Smelting & Refining Company.

A. (Continuing.) All of the above copper to be refined and of the [1016—964] best quality, and to be free from other metals, sulphur and other impurities; to show on analysis not less than 89.8 per cent pure copper, and to be delivered in 20-pound

(Testimony of Edwin F. Meyer.)

ingots, and ingots of larger size cannot be accepted. Award will be made to lowest bidder on each of the above classes. It is further provided that the bidder to whom contract on class 219 may be awarded shall agree to make shipment of the material by American lines of transportation, and so forth. Respectfully, E. B. Rogers, Paymaster General, U. S. Navy. To General Storekeeper, Puget Sound.

Mr. ALLEN.—What is the amount there?

A. 13,490 pounds. There is a letter in a folder under a letter-head of the Great Western Smelting & Refining Company, smelters and refiners of metal, 1924 Nineteenth Avenue South, Seattle. (Reading:) Emar Goldberg, manager, Seattle, Washington. December 11th, 1908. Mr. Ray Spear, General Storekeeper, Puget Sound Navy Yard, Bremerton, Washington. The writer has at different times taken up with you the matter of shortage. On our contract number 1058, requisition 45, we have made several deliveries, and practically every delivery is reported short. While we admit we are liable to make a mistake once in a while, it does not seem reasonable that we would make a mistake in every weight. We have yours of December 4th giving us a shortage of 24 pounds on our delivery of November 24th, and a shortage of 8 pounds on our delivery of February 26th. Yours very truly, Great Western Smelting & Refining Company, Emar Goldberg.

Now, upon receipt of that I took the matter up with the storeman, the man who weighed the material.

Mr. SHIPLEY.—To whom do you refer?

A. Lockwood. [1017—965]

